TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 707

HAROLD L. ICKES, SECRETARY OF THE INTERIOR, PETITIONER

vs.

UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

Petition for certiorari filed March 11, 1953
Certiorari granted March 30, 1953

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 767

HAROLD L. ICKES, SECRETARY OF THE INTERIOR, PETITIONER

vs.

UNITED STATES OF AMERICA EX REL. CHESTATES PYRITES & CHEMICAL CORPORATION

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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Court of Appeals of the District of Columbia

No. 5760.

UNITED STATES OF AMERICA ex Rel. CHESTATEE PYRITES & CHEMICAL CORPORATION, Appellant,

vs.

RAY LYMAN WILBUR, Secretary of the Interior.

a Supreme Court of the District of Columbia.

At Law.

No. 76361.

THE UNITED STATES OF AMERICA ex Rel. CHESTATEE PYRITES & CHEMICAL CORPORATION, Plaintiff,

vs.

RAY LYMAN WILBUR, Secretary of the Interior, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 In the Supreme Court of the District of Columbia as a District Court of the United States.

At Law.

No. 76361.

THE UNITED STATES OF AMERICA ex Rel. CHESTATEE PYRITES & CHEMICAL CORPORATION

vs.

ROY O. WEST, Secretary of the Interior.

Petition for Review and Mandamus.

Filed Feb. 18, 1929.

The petition of the United States on the relation of Chestatee Pyrites & Chemical Corporation respectfully represents:

I. The relator, Chestatee Pyrites and Chemical Corporation, is a corporation duly and legally organized and existing under the laws of the State of Georgia, a citizen of the State of Georgia residing in the County of Fulton in said State and this petition is brought to review the final decision of the Secretary of the Interior upon a question of law which has heretofore arisen in the adjustment, liquidation and payment of claims under the Acts hereinafter named against Roy O. West, citizen of the State of Illinois, officially residing in the District of Columbia.

II. That the said Roy O. West, respondent, is Secretary of the Interior of the United States, and as such charged with the administration of the laws of the United States relative to the War Minerals claims and especially Section 5 of the Act of March 2, 1919, and the amendments thereto including the amendment entitled "A Bill to Amend Section 5 of the Act approved March 2, 1919, known as the War Minerals Act," approved February 13th, 1929, and such respondent is sued in his official capacity as Secretary of the Interior as aforesaid.

III. The said respondent as Secretary of the Interior and his predecessors in office under said Section 5 of said Act as amended was and is:

2 "Authorized to adjust, liquidate and pay such net losses as have been suffered by any person, firm or corporation, by reason of producing or preparing to produce * * * pyrites * * * in compliance with the request or demand of the Department of the Interior * * * to supply the urgent needs of the nation in the prosecution of the war * * *"

IV. The Chestatee Pyrites & Chemical Corporation, between the 6th day of April, 1917, and the 11th day of November, 1918, in preparing to produce and in producing pyrites in compliance with the request of the Department of the Interior to supply the urgent needs of the nation in the prosecution of the war, made expenditures and incurred obligations in good faith upon property containing pyrites in sufficient quantities to be of commercial importance.

V. As authorized by said Act of March 2, 1919, Section 5, the Chestatee Pyrites & Chemical Corporation did, on the 5th day of March, 1919, file its claim with the Secretary of the Interior seeking and praying that an award be made to it under said Act of its net losses for the expenditures made and obligations incurred by complainant in good faith upon property which contained pyrites as described in said Section 5 of said Act.

VI. In the said petition or claim of the Chestatee Pyrites & Chemical Corporation filed as aforesaid on the 5th day of March, 1919, this relator as part of said expenditures made and obligations incurred claimed interest paid by it and due to be paid by it thereafter on borrowed money necessary to be borrowed for the purpose of complying with the request and demand of the Secretary of the Interior. Thereafter on October 18, 1919, Honorable Franklin K. Lane, then Secretary of the Interior, made an award which was considered by relator wholly inadequate.

VII. Thereafter, by Act approved November 23, 1921, Chapter 137, 42 Stat. 322, it was provided:

"That all claimants * * * shall be reimbursed such net losses as they may have incurred, and are in justice and equity entitled to from the appropriation in said Act;"

and the Secretary of the Interior was authorized:

"If in claims passed upon under said act (of March 2nd, 1919) awards have been denied or made on rulings con-

trary to the provisions of this amendment (the amendment of November 23, 1921) or through miscalculation, the Secretary of the Interior may award proper amounts or additional amounts."

and the then Secretary of the Interior, Honorable Albert B. Fall, did review the claim of the Chestatee Pyrites & Chemical Corporation, relator herein, and did require a complete study of the facts of said relator's claim, and among other things required an investigation thereof by the Chief Accountant in the War Minerals Relief Division of the Department of the Interior.

VIII. Said Chief Accountant by report filed September 21, 1922, among other things found and reported in substance that in compliance with the demands and request of the Government and in a legitimate effort to produce and in producing pyrites, relator had been compelled to borrow and expend large sums of money and had agreed to pay interest thereon; that prior to November 11, 1918, relator had actually paid interest in a large amount and there had accrued on said loans further interest that was then unpaid. Other amounts have since accrued and are yet accruing.

IX. Prior to making said loans referred to in the report of said accountant the said Secretary of the Interior Franklin K. Lane had specifically through his agents urged and requested the Chestatee Pyrites & Chemical Corporation, relator herein, to borrow the sums of money it was compelled to borrow aforesaid for the purpose of extending its production of pyrites, which money was so borrowed and used.

X. The Department of the Interior found, under undisputed evidence, that Chestatee Pyrites & Chemical Corporation, by reason of producing and preparing to produce pyrites, in compliance with the request and demand of the Department of the Interior, to supply the urgent needs of the nation in the prosecution of the war in good faith expended money and incurred obligations in response to such request and demand, and that such expenditures so
3 made and obligations thus incurred by the Chestatee Pyrites & Chemical Corporation were made in good faith upon property which contained pyrites in sufficient quantities to be of commercial importance; and there is no dispute between the Department of the Interior and said

Chestatee Pyrites & Chemical Corporation that said corporation is entitled to receive an allowance and award for its net losses suffered as a consequence of its compliance with said request and demand.

XI. Thereafter, relator's claim was brought before the Honorable Albert B. Fall, then Secretary of the Interior, who made an additional award to relator, said award being based upon the said report of said Chief Accountant and the finding of John Briar, Assistant War Minerals Relief Commissioner of the Department of the Interior. In said Assistant Relief Commissioner's report on the claim of relator it was found that the Secretary of the Interior in office at the time relator was requested and required to produce pyrites and to make said loans therefor realized that relator's mine presented opportunity for the biggest production of pyrites in the entire country and "that the said Secretary used every means in his power to persuade claimant to develop it."

XII. Upon the coming in of said report of said Briar, the Honorable Albert B. Fall then the Secretary of the Interior reviewed the same making allowance to relator by way of a further award but specifically and definitely denying to relator any award for its net losses incurred by reason of payment of interest on borrowed money or obligations incurred to pay further interest, the said Secretary's conclusion being in substance that if the Congress contemplated the payment of interest, such award would not preclude remedial action by the Congress.

XIII. Subsequent Secretaries of the Interior, including the respondent herein, declined and refused to make award in allowance for such expenditures or obligations incurred, admitting that interest had been paid on borrowed money and that obligations had been incurred to pay further interest but holding that such payments did not constitute allowable net losses.

XIV. Thereafter, the Congress of the United States by the Act hereinbefore described, approved February 13th, 1929, gave jurisdiction to this Court to review the final decision of the Secretary of the Interior upon any question of law which had arisen or which might thereafter arise in the adjustment, liquidation and payment of claims under said Section 5 of the Act Approved March 2nd, 1919, and amendments thereto. On the claim of this relator there has been

a final decision of the Secretary of the Interior upon a question of law, to-wit: it is not disputed as a matter of fact that relator suffered net losses by reason of payments of interest on money borrowed and by reason of obligations to pay such interest but it was held by the Secretary of the Interior that notwithstanding relator had suffered such net losses, the amount of which is easily ascertainable that such net losses were not such as were required to be paid by the said Act of March 2nd, 1919, as amended.

XV. Since the passage of the Act approved February 13th, 1929, respondent while not denying that relator has suffered such net losses declines himself to make an award thereunder and this petition is brought to review the final decision of the Secretary of the Interior upon the question of law aforesaid and for the writ of mandamus.

XVI. That the Secretaries of the Interior and the respondent erred in law in not finding that moneys paid and obligations incurred for the use of money borrowed as aforesaid resulting in net losses were proper matters to be allowed in making an award under said Act of March 2nd, 1919, as amended.

XVII. Wherefore petitioner, on behalf of the relator aforesaid, prays:

1. That this Court review the final decision of the Secretary of the Interior and his predecessors in office upon the question of law involved and direct said Secretary, respondent herein, to make an award of such amount as the facts show is due for interest paid on borrowed money and for obligations to pay interest thereon.

2. That a writ of mandamus be issued directing the respondent, Roy O. West, Secretary of the Interior, to take jurisdiction of the claim of relator for expenditures made and obligations for interest incurred as hereinbefore set forth and to allow such sum as may have been paid or contracted to be paid therefor, and to adjust and pay
4 relator's net losses consisting of interest paid on borrowed money and obligations incurred to pay interest thereon.

3. That such other order or orders be entered as the Court may deem necessary under the law.

4. That a rule may issue requiring respondent, Roy O. West, as Secretary of the Interior, to show cause, if any he

can, why this Court should not review said final decision and why a writ of mandamus should not issue as herein prayed.

CHESTATEE PYRITES & CHEMICAL CORPORATION,
By GEO. L. PRATT,
Vice-President and Treasurer.

DISTRICT OF COLUMBIA, *ss:*

George L. Pratt, being duly sworn, deposes and says that he is vice president and treasurer of Chestatee Pyrites & Chemical Corporation, and as such is authorized to file this petition and make this affidavit; that he has read and knows the allegations in said petition, and that the same are true, except where stated on information and belief, and when so stated he believes them to be true.

GEORGE L. PRATT.

Subscribed and sworn to before me this 16th day of February, 1929.

FLORENCE M. STEPHENSON,
[NOTARIAL SEAL.] *Notary Public.*

My commission expires April 28, 1931.

EDGAR WATKINS,
Attorney.

Motion.

Filed Mar. 15, 1929.

In the above-styled cause relator respectfully shows to the Court that the respondent, the Honorable Roy O. West, has ceased to hold the office of Secretary of the Interior and that that office is now held by the Honorable Ray Lyman Wilbur; that there is a substantial need for continuing and maintaining the above-styled cause and for obtaining an adjudication of the questions therein involved.

Wherefore, within six (6) months after the termination of the service in the office of Secretary of the Interior of the Honorable Roy O. West, relator moves that this cause

be permitted to continue and be maintained against his successor in office, the Honorable Ray Lyman Wilbur.

EDGAR WATKINS,
Attorney for Relator.

Receipt of copy acknowledged this Mch. 11, 1929.

O. H. GRAVES,
Atty. for Deft.

Order.

Notice of the foregoing motion having been given, and the Honorable Ray Lyman Wilbur, Secretary of the Interior, consenting thereto, it is ordered that Ray Lyman Wilbur, as Secretary of the Interior be, and he is hereby, substituted for the respondent Roy O. West, and this cause be permitted to be continued and maintained against Ray Lyman Wilbur as successor in office of respondent Roy O. West.

WENDELL P. STAFFORD,
Judge.

Response to the Rule to Show Cause.

Filed Mar. 15, 1929.

Comes now Ray Lyman Wilbur, Secretary of the Interior, and responding to the rule to show cause herein, suggests to the Court that the petition for review presents only the following question, namely, whether or not one who was engaged in producing or preparing to produce any of the minerals named in said act and sustained a net loss on account of, or including, interest paid on borrowed money, or indebtedness applied as capital to compliance with its provisions is entitled to have such interest loss reimbursed?

This question was decided by the Secretary of the Interior in the negative in connection with petitioner's claim for losses sustained under section 5 of the War Minerals Relief Act of March 2, 1919 (40 Stat. 1272), as amended, and as shown by copies of the various decisions of the Secretary of the Interior and recommendations of the War Minerals Relief Commissioners marked, respectively, Exh-bits A, B, C, D, and E, attached hereto and made a part hereof.

Under the act of February 13, 1929, Public No. 728, 70th Congress, this Court is vested with jurisdiction to review such questions of law as may have been decided in the disposition of petitioner's said claim by the Secretary of the Interior, and respondent makes no objection to, but on the other hand invites, a review of such questions. The petition for review presents the sole question for which petitioner prays a review herein, and it is assumed that the Court will confine its review to the single question raised.

RAY LYMAN WILBUR,
Secretary of the Interior.
By E. C. FINNEY,
Solicitor, Interior Department.
O. H. GRAVES,
Assistant to the Solicitor.

Ex. A.

(Copy.)

Department of the Interior, War Minerals Relief Commission, Washington.

Commissioners: John F. Shafroth, Martin D. Foster, Philip N. Moore.

June 5, 1919.

The Honorable the Secretary of the Interior.

DEAR MR. SECRETARY:

In the matter of Claim No. 1, Chestotee Pyrites and Chemical Corporation and N. P. Pratt and George L. Pratt, referred by you to this Commission for investigation, your Commission beg to recommend an award of $133,578.46 as the entire sum of which the United States Government bears any moral or statutory obligation.

Very truly yours,

(Signed) JOHN F. SHAFROTH,
M. D. FOSTER,
PHILIP N. MOORE,
Commissioners, War Minerals Relief Commission.

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Ex. B.

(Copy.)

Department of the Interior, Washington.

Aug. 8, 1919.

Claim No. 1.

In re Chestatee Pyrites & Chemical Corporation, N. P. Pratt, and George L. Pratt.

The above is a claim under the War Minerals Relief Act (section 5, act of March 2, 1919, 40 Stat., 1274). The law authorizes compensation for losses incurred in the production of pyrites during the war due to stimulation by the Government.

Here there was such stimulation commencing June 18, 1917. I have reviewed the record and brief filed and an award of $219,607.90 is made. This is based upon the report of the War Minerals Relief Commission, but with 56.6 as the percentage of stimulation and a partial allowance of the financing item.

Nothing has been allowed for the railroad since it appears that the rails were bought prior to the stimulation and the correspondence indicates the claimants' purpose to build prior to the Government's request. No allowance has been made for the salaries.

(Signed) FRANKLIN K. LANE,
Secretary.

Ex. C.

(Copy.)

United States Department of the Interior, Office of the Secretary, Washington.

October 15, 1919.

Claim No. 1.

In re Chestatee Pyrites and Chemical Corporation, N. P. Pratt, and George L. Pratt.

In the above claim under the War Minerals Relief Act, section 5, act of March 2, 1919 (40 Stat. 1274), an award of $219,607.90 was made August 8, 1919. Nothing was there allowed for the railroad.

Additional testimony as to the railroad has now been submitted. The claimants have also urged that the amount of expenditure to which the percentage of stimulation was applied should be increased.

I have reviewed the record, the report of the War Minerals Relief Commission and the exceptions thereto filed. No reason is found for disturbing the prior ruling as to the railroad. To the amount of expenditure upon which the percentage of stimulation (56.6%) is applied, the sum of $6,928.04 is added.

The award is accordingly increased to $223,529.17.

(Signed) FRANKLIN K. LANE.

Ex. D.

(Copy.)

JB-WCS. September 22, 1922.

Claim No. 1.

The Chesatee Pyrites and Chemical Corporation,
Atlanta, Georgia.

Memorandum in Review of.

This claimant had a partially developed plant at the time of government interference, and the claim represents the loss due to the expanded operations under government stimulation. It was the first claim considered under the original War Minerals Relief Act.

The Commissioners had had no experience in dealing with big, complex claims and therefore no rules or policies had been tested by actual application. They attempted to fix the loss through percentages, that is, by basing it upon the proportion the amount claimant meant to expend and produce under his own non-stimulated plants bore to the estimated expenditure and production of the bigger mill, under government stimulation. The result was that the percentage fixed by the Commission was increased by the Secretary and, later, by the latter still further in-
7 creased, with the claimant insisting that all were too low, and that the per cent should apply to all the expenditures instead of to only a part of them.

It may be said now, without criticism of the former Commission, that the plan was unsatisfactory in some respects. Percentages and ratios were confusing, and the element of doubt was too great. A more easily understood and more workable plan was adopted in the consideration of claims which came later.

In the present review, the former plan is not ignored entirely, as will be seen by the auditor's report, but the claim is considered practically de novo, in the belief that it is better to apply rules which have grown out of experience, and with which examiners are familiar, than to merely consider the alleged errors of a plan which is unfamiliar, because abandoned long before the amended Act, under which we are now considering these claims, was passed. The auditor was directed to audit this claim in the same manner that all claims are now being audited. This meant that he was to treat the company as a going concern on the date of stimulation; that any loss or profit prior to that date, concerning which even claimant and counsel are not in perfect agreement, was claimant's own, with which the Government is not concerned; that all expenditures during the stimulation period, or which properly should be charged to the period, were to be listed; that deductions for items not allowable and salvage were to appear, and that the net loss was thus to be shown.

There may be controversy, later, over the items disallowed, or the salvage, but the plan itself can at least be understood and the points in controversy, if controversy should follow, will not only be reduced in number, but they will be set out plainly. By this method the government takes no account of the operations before stimulation, when it was not responsible for either losses or profits, but ascertains the loss during the stimulated period, for which it is responsible, by simply deducting from the expenditures for that period the items which must be disallowed, the receipts and the salvage. Pursuant to these instructions the claim was audited, and the auditor's report, which is submitted herewith, shows that the task was performed with painstaking care and intelligence. Based upon that report, but not agreeing with the conclusions in every particular, the expenditures, deductions and net loss are hereinafter set out:

It will be observed that the expenditures for the building of the railroad, which heretofore have been denied, are

allowed. Considered under the amended Act, and in the light of the accepted practice, there is no reason whatsoever why the expenditures for this railroad should not be compensated. Claimant, before stimulation, may have had it in mind some day to build the road, and he may have taken advantage of the opportunity to purchase some rails at a low price, but there is not the certainty that he would ever have built it. A fair deduction would be that the plan to build the road had been abandoned. There *is* the certainty that the road was built after government stimulation; that Secretary Lane approved if he did not direct the building; that it was necessary in connection with the mining project, and claimant testifies that but for such stimulation and such urgency the expenditure would not have been made. The record is so clear, and so complete as to details, that there can be no reasonable doubt as to government responsibility.

Deductions

All interest charges have been deducted. It is not believed that the Act contemplates the payment of interest on borrowed capital. Counsel for claimant has filed a brief on this point in which, after acknowledging that in claims against the government, interest is not allowed before judgment, he cites exceptions to the rule and attempts to place the beneficiaries of this Act in the excepted class. He points to the contributions made by citizens in aid of the Revolutionary War, and the War of 1812, wherein interest was allowed when, finally, these advances were repaid by the government. But the claimants under the War Minerals Relief Act do not stand in the same moral relation as did the persons who advanced money to the government during the Revolutionary War or the War of 1812. The difference is that the early patriots placed their money at the disposition of their government without expectation or chance of profit, but with the probability that all would be lost, while claimants under the War Minerals Relief
8 Act engaged in a business enterprise, with hope and the expectation of profit. The government now, because it publicly urged increased production of ores, voluntarily repays net losses in cases where the hope of profit was not realized. The difference is plain.

Counsel, further, cites the case wherein the State of New York, by a decision of the Supreme Court, was refunded interest on bonds, which were issued to equip troops for the Civil War. Here, however, there was between the State of New York and the government what amounted to a definite contract, Secretary Seward having wired the New York State officers to raise and equip the troops and stating that the government would refund to the State the expenses incurred. Also, Congress had passed an Act authorizing the refund. That is why the New York case was made an exception to the rule laid down by the Supreme Court, the language of which rule is as follows:

"Interest is not to be awarded against a sovereign government unless its consent to pay interest has been manifested by an Act of its Legislature, or by a lawful contract of its executive officers."

There were present in the New York case what the Supreme Court held to be a "lawful contract," which contemplated the repayment of interest, and the necessary legislative action.

Counsel also bases the claim for interest upon the equity provision of the War Minerals Act. The equity provision is a broad provision. The Act, it is supposed, would be administered in equity even though the provision were absent. But the provision which says that no profits shall be allowed, is a specific provision, not to be ignored on the ground that "equity" would prevent its observance. It is because of this specific provision that interest on an operator's own money can not be allowed, for such compensation would be in the nature of a profit to him. If, therefore, interest is to be allowed to the man who operated on borrowed capital, it must be upon the theory that he is to be treated differently from the man who risked his own money in the enterprise; that claimants who had no capital of their own, but had to borrow, are to be made a favored class. If the provision of the Act relating to profits prevents an allowance for interest to the man who used his own money, it applies to all other claimants as well. If Congress had intended to allow interest on *borrowed* capital undoubtedly it would have provided for interest on *invested* capital, whether borrowed or not. In prohibiting the payment of interest on invested capital, by in-

cluding the no profits provision, the payment of interest on borrowed capital was likewise prohibited. It is difficult in law or practice to place the man who has no capital on exact footing with the man who has. The disadvantage of having no capital is recognized in the business world, and the borrowing operator always is compelled to stand the charges which lack of capital entails. Unless it is to be held that interest on capital is not profit, the conclusion is inevitable that the interest loss sustained through the borrowing of capital is the operator's own loss and can not here be compen-ated.

Would Apply to Purchase of Property.

The arguments which ordinarily are used to support the repayment of interest apply with equal force to reimbursement for purchase of property. How, it is asked, could a miner without capital be expected to respond to the appeals of the government for ore if he did not borrow the money, and, having borrowed it and produced the ore, why is the interest he paid not a legitimate item of expenditure under the Act. Might it not as well be asked how a man having no mining property could answer the appeal unless he purchased or leased mining lands, and if he did so purchase or lease lands and thereby produce ore, would the purchase price not be a legitimate expenditure?

But if the Congress had contemplated reimbursement for purchase of property, many more millions than are represented in the War Minerals fund would have been appropriated, and provision would have been made for taking over of title to the property. It is a wrong inference to say that, in issuing appeals for increased production, the government assumed a moral obligation to supply men with capital, to pay the cost of securing capital, or to take over mining lands at cost to the owners thereof. It is equally erroneous to read into the Act a legal direction that expenditures of this character be compensated. When

9 Congress permits the payment of interest by special Act it is subject to conditions, such as rate of interest, period of time, etc., none of which conditions appear either in the original or the amended Act. At the time the Act was amended, last November, Congress and claimants well knew that the Act was interpreted by those who were

administering it to prohibit repayment for interest. Then was the time the question should have been raised and Congressional expression secured. It has been contended before this writer that the government, in publicly urging increased production of these ores and not at the same time furnishing or offering to furnish the capital required, thereby assumed the obligation to repay interest charges where borrowing was necessary. Conversely, may it not be said that by not offering to furnish capital the government gave notice that the matter of capital was the miner's own affair. The argument is further met by the fact that the government permits the payment of interest through specific legislative action and not through obligations created as described.

Financing Charges.

If, then, the general published appeals for increased production did not relate to the furnishing of capital to those who did not have it, or the payment of interest to those who did, and if the Act which followed contains no specific provision for financing charges, the repayment of the latter must find its authority in the wide discretion given the Secretary of the Interior in the administration of the Act. There is no legal prohibition of the allowance of a financing charge, and if it were shown that the Government has specifically directed claimant to finance his operations substantially in the manner in which they were financed, the Secretary might, in his discretion, allow any part or all of such expenditure. And in the event of such allowance, it would not mean that a hard and fast rule had been adopted which would make repayable financing charges due alone to general published appeals for increased production, nor would it mean that bonuses or promotion charges which, in fact, were only excessive, usurious interest charges, are to be compensated. It would only mean that in claims where the government through its agents was a party to the financing, the fact might be taken into consideration by the Secretary in fixing the award.

In this particular case, as is testified, the then Secretary of the Interior personally requested one of the claimants to operate the properties on a big scale, which claimant at first declined to do, unless the government should under-

write the venture. This, of course, was impossible, and, after some delay, the Secretary, through his personal agent, requested Ashcraft and Wilkinson to use their influence to induce claimant to enlarge his operations, and further, he asked them to assist in financing him. Ashcraft and Wilkinson did so use their influence, and with success, and did finance claimants, for which financing claimant is obligated for a large amount. Claimant contends that the plan adopted was not more expensive than would have been the raising of the money by the sale of bonds, or through any of the other promotion plans which were in use during the war period. This, in substance, is claimant's side of the matter, and he asks that the cost of financing be compensated.

Ashcraft and Wilkinson were prominent in financial affairs. They had made a great deal of money in pyrites dealings because of the war. It is established that they urged claimant to enlarge his enterprise, and that they volunteered to secure the money therefor. They may have acted partly in response to the request of the Secretary, partly through patriotic motives, and partly because of the contract which they hoped to make and did make with claimant. Claimant was to pay 6 per cent on the loan to the bank and, in addition, was to pay Ashcraft and Wilkinson from fifty cents to one dollar a ton upon the entire production of the new mill up to 335,000 tons. As it was confidently expected that the new mill would run to its full capacity, they stood to make hundreds of thousands of dollars in the deal. What they really did in consideration of the contract was to assume a risk of loss. If they had merely pointed the way by which the money was secured, without incurring any risk themselves, the contract would be outrageous. But the record shows that while they assumed a risk, they took pains to make the risk as small as possible. They made the contract with the Chestatee Company but in addition to the company's notes required the personal endorsement of the notes by claimants. They took what amounted to a lien upon the property of the claimant company and the ore in the ground. And in order to make the chance for profit as large as possible, claimant was required to make Ashcraft

and Wilkinson the exclusive sales agent for the ore, for which they were to be paid a brokerage fee of 25 cents per ton. There were four seccessuve contracts by which the $695,000 was furnished the claimant company, the last being more favorable to Ashcraft and Wilkinson than those which preceded it. It provided for the payment of $250,000 to Ashcraft and Wilkinson for their services in securing a loan of $695,000, and in addition, for a brokerage fee of 25 cents per ton on the ore. This tells the story. It shows that the amount to be paid, not considering the brokerage fee, was more than thirty five per cent of the loan—a per cent for financing far above that allowed in the wild cat schemes with which the country is familiar. To consider the financing charge in comparison with the estimated *receipts for ore*, as the auditor has done, obviously is not the proper view. The correct way to determine whether or not a financing charge is too high, is to compare it with the amount of the loan. If, for instance, the receipts from the sales of ore should amount to $5,000,000, the per cent of the financing charge contained in this contract as compared with the $5,000,000 would be very small, but the fact would still remain that this claimant was to pay Ashcraft and Wilkinson $250,000 for a loan of $695,000.00. When a man in the ordinary course of business secures a loan, the commission is based upon the amount of the loan and not upon the value of the product which the borrower, as a result of the loan, might place upon the market. Of course, Ashcraft and Wilkinson are not the claimants here, although they will benefit more than will the claimants if an award be made, and whether or not they drove a hard bargain with claimants is not essential except as it bears upon the recognition of this financing contract as an obligation incurred and to be compensated. The real question is:

Was the financing contract such an obligation as should be repaid by the government in whole or in part?

As to the allowance of the entire amount, there can be no question that it would not be warranted. It would mean payment to Ashcraft and Wilkinson for ore still in the ground, and which probably never will be mined. The unfulfilled part of the contract, if ever it was to be recognized under the Act, was invalidated when Ashcraft and Wilkin-

son, having a lien upon the ore in the ground, consented to its disposal. When they took part in disposing of all the property of the Chestatee Company, and winding up its affairs, they were estopped from holding that company, or the Pratts liable for the fulfillment of the contract. It is an error to hold that the provision in the Act relating to obligations incurred means that any obligation whatsoever must be compensated. The language should be interpreted in connection with the language of the entire Act. The obligation must relate to producing or preparing to produce ore, and it must be a reasonable obligation, such as would be incurred by a reasonably prudent man. Moreover, the amount that would be repayable would be the amount for which the creditor could secure judgment in a court. The act contains a few mandatory provisions, the meaning of which can hardly be misconstrued, and the general administration is left to the wise discretion of the Secretary of the Interior for the purpose, undoubtedly, of preventing the payment of ridiculous, unfounded or unreasonable charges and to give to claimants the amounts to which they are in justice and equity entitled.

In the first award, Secretary Lane allowed $18,112.00 for financing. He reached this amount by the following process: He first found that the per cent of stimulation which should be granted claimant was 56.6. On that basis $320,000 of the loan was considered admissible. He held that 10 per cent would be a reasonable allowance for financing, and, applying the 56.6 per cent of stimulation to 10 per cent of $320,000, the financing allowance was found to be $18,112.00.

I am of the opinion that 10 per cent is a reasonable allowance for financing in this particular claim. The amount of money required to meet the government demands was so great as to make the securing of it by ordinary means almost impossible. The activities of the government to induce Asheraft and Wilkinson to finance claimant, so that war needs might be met quickly and in large measure, were personal, direct and effective. The fact that Secretary Lane who himself had a part not only in the
11 stimulation of claimant but, through suggestion, in the financing, recognized that Asheraft and Wilkinson had performed a service to the government, is evidence of that service; and while the contract which they had with

claimant furnishes no basis for fixing the amount to be allowed, a fair adjustment can be reached by a study of all the event- connected with the transaction. Secretary Lane was warranted in making an allowance of 10 per cent, but the application of the 56.6 per cent both as to the amount of the loan and the 10 per cent itself operates to bring the allowance less than it should be. The total amount of this loan was $695,000. Of this amount $50,000 was used in the period before stimulation. The 10 per cent for financing should apply only to the amount of the loan which went into stimulated operations, namely, $645,000, so that the allowance which is here recommended is $64,500.00.

Salvage.

The question of salvage is perplexing in nearly all claims, but here it is unusually complex and difficult. The claimant when submitting the claim, estimated the usable value of all the property at $200,000, but that was not intended to be an estimate of the *salvage* value, for it was stated at the time that there was no salvage value, because by the terms of the lease the machinery and equipment, or practically all of it, could not be removed from the property. Claimant, it appears, in offering to accept a deduction of $200,000, did so in the belief that the equipment which they would have used in their own nonstimulated operations, would have cost that amount, and in consenting to such deduction it was on the supposition that there would be no deductions for interest, salaries, etc. It was, in fact, a settlement proposition. Passing from the conjectural, let us see what was actually realized when this property was disposed of to the Piedmont Corporation. The claimant company had a floating indebtedness of $50,000, which it could not pay and which threatened to force it into bankruptcy. The Piedmont Corporation assumed this debt. The Piedmont Corporation, as a further consideration, transferred to claimant company $150,000, of its preferred stock. The question is, is this stock worth its face value? Claimant asserts that it is worth nothing at the present time, and, in view of the demoralized condition of the business which the Piedmont Corporation was or is to carry on, there are good grounds for the contention. But it is the policy to ascertain the value at the time of the Armistice, and, there-

fore, the claimants' own statement on that point is taken for a basis. The total face issue of the stock was $1,000,000. If this stock represented an actual property value of $200,000, it was worth, as may readily be computed, 20 cents on the dollar and the value of the $150,000 in stock transferred to the claimant company would be $30,000. I am of the opinion that this plan of ascertaining the deductible value of the stock, is as equitable as any that might be adopted. The items of sales of equipment previously must be added to the foregoing salvage, but they are not in dispute and are set out in the schedule of deductions.

Then comes the equipment which was purchased before stimulation, but used during stimulation, which the auditor presents for consideration in connection with salvage. As a matter of history the auditor states that in the Denison claim, No. 30, the former Commission allowed the cost of equipment purchased before stimulation and took no account of salvage, and he thinks that the Chestatee claim is on all fours with the Denison claim. If the auditor is right, the action of the former Commission will not be accepted as a precedent to be followed, and the Denison claim, which is still before the Commissioner for review, will be adjusted in harmony with the principles that are here being applied to the Chestatee claim. It should be stated in this connection, however, that examiners for the present Commissioner regard the two claims as materially dissimilar. The soundness of these diverging views will have judgment when a recommendation as to the Denison claim is made.

The plan of the present Commissioner in adjustment of claims where the plant was a going concern at the time of stimulation, and the reasons therefor, may be stated in a few words.

Equipment and machinery purchased before stimulation but used during stimulation, will be given a liberal rental or depreciation credit only. The reason why its purchase price will not be allowed is because the government
12 was in no wise responsible for its purchase, and the claimant at the moment he purchased the property, had incurred any loss that might come, and that loss was therefore his own. To allow for its purchase would be in fact to allow for the purchase of property.

Supplies which were purchased prior to stimulation and used during stimulation and thereby made completely value-

less, such for instance as coal, will be compensated in full.

To hold that when the government interfered it destroyed claimant's estate and deprived him of probable profits, which should be compensated, as has been suggested, is not sound. First, that would mean an allowance of profits, which is specifically prohibited by the Act, and the profits would be merely estimated profits which might never have been realized. Second, the government only says to claimants that it will reimburse the actual net loss that was sustained for the stimulation period.

In this review it is held that the claimant is fairly entitled to a rental or depreciation allowance of 20 per cent of the machinery and equipment purchased before stimulation but used during stimulation, and the entire purchase price of the supplies which were so used or consumed and deprived of all salvage value. It is understood, of course, that ordinarily there must not be a deduction for salvage on equipment and machinery where rental only is allowed. In this claim the equipment and machinery so rented was a part of the plant as finally sold, and salvaged, but that fact was considered when the amount of salvage of the entire property was fixed, and therefore the 20 per cent now mentioned for rental is not subject to increase on account of salvage. The amount of the prestimulation expenditures to which the 20 per cent rental should apply is $132,139.31, which makes an allowance of $26,427.86 for that item. The cost of miscellaneous items in the same period, which should be compensated in full is $16,901.07.

A subsistence allowance of $4,032 for G. L. and N. P. Pratt was substituted for the salary charge of $25,966.67 which appears in the claim. A straight salary allowance to a partner or part owner of a property would mean the granting of a profit to him. Subsistence is allowable, but if he is to receive compensation above subsistence it must come from profits earned by the corporation or partnership.

The claim as adjusted according to the foregoing decisions, is as follows:

Expenditure:	
June 18, 1917, to Nov. 11, 1918, agreed upon by the auditor for the government and the auditor for claimant	$784,791.14

Deductions:		
Ore sales	$82,077.87	
Executive salaries	25,966.67	
Interest	40,795.13	
Taxes	834.76	
Real estate	750.00	
Legal services	585.75	
	$151,010.18	
Salvage:		
Salvage for stimulation period on basis of $80,000 from Piedmont Corporation	$47,546.73	
Cash received for Sundry Equipment	7,695.00	
	$55,241.73	206,251.91
		$578,539.23
Add allowances:		
Rents from property included in deductions in operations a/c	$2,881.63	
Per diem G. L. and N. P. Pratt, in lieu of salary, 508 days each @ $4.00	4,064.00	
Rental or depreciation on Pre-stimulation plant, etc. 20 per cent of $132,139.31	26,427.86	
13		
Misc. items, tools, material, for water supply, etc., purchased before stimulation but used in the stimulated operations and their value thereby totally destroyed.	16,901.07	
Financing contract 10% of $645,000	64,500.00	
		114,774.56
		$693,313.79
Less award heretofore made and paid		223,529.17
Net loss		$469,784.62

I am of the opinion that the net loss for which claimant should now be compensated is $469,784.62, and I recommend an additional award of that amount.

In reviewing this claim I have been struck by the magnitude of the expenditures and the possibilities of output. The very bigness of it tended to lead an examiner unconsciously to fail to give claimant full justice, but that I have tried to overcome. If I have seemed to deal with it liberally, it was because the record showed that the then Secretary of the Interior, realizing no doubt that this property presented opportunity for the biggest production of pyrites in the entire country, used every means in his power to persuade the claimant to develop it. It is true that he could not and did not guarantee claimant against loss, but his full influence short of underwriting the project was exerted. Always, too, there was a realization that claimant, in responding to government request, will suffer great financial loss, notwithstanding the generous provisions of the War Minerals Relief Act. It would be too much to say that the recommendations contained herein offer a perfectly accurate adjustment, but it is believed that they approach justice and equity as closely as can be expected in view of the complexity of the claim.

(Recommends additional award of $469,784.62.)

(Signed) JOHN BRIAR,
Assistant Commissioner.

Ex. E.

(Copy.)

The Secretary of the Interior, Washington.

September 28, 1922.

Claim No. 1.

The Chestatee Pyrites and Chemical Corporation, Atlanta, Georgia.

Additional Memorandum by the Secretary, to be Attached to the Records of the Assistant Commissioner as Part of the Record Herein.

I have investigated this case and listened with great interest and a large degree of sympathy to the statements

made by Counsel for the Claimants, and to the arguments advanced with reference to the matter of allowing interest upon this claim; additional allowance for services, and an allowance of an increased amount for compensation for the *Free*-stimulation plant.

After full consideration, I am confident that the conclusions reached by the Commission are as nearly correct as it is humanely possible to arrive at a just and equitable sum to be awarded in relief, I, therefore, find myself impelled to make the award as recommended, in the sum of Four Hundred Sixty-Nine Thousand, Seven Hundred Eighty-Four Dollars and Sixty-Two Cents ($469,784.62).

If the Congress contemplated the payment of interest upon this claim, as has been suggested in argument, then this award of course does not preclude remedial action by the Congress of the United States acting directly.

(Signed) ALBERT B. FALL,
Secretary of the Interior.

ABF/C.

14 *Stipulation.*

Filed Sep. 24, 1929.

It is hereby stipulated and agreed by and between counsel for the above named parties—

(1) That the submission of this cause heretofore made upon the petition and response be withdrawn.

(2) That the response be withdrawn and stricken from the record.

(3) That the uncertified copies of the findings of the Secretary of the Interior, the War Minerals Relief Commission and the Assistant Commissioner of War Minerals attached to the answer filed herewith be considered by the Court in connection with this case with the same effect as though they were the originals.

(4) That the respondent be permitted to file and serve answer in lieu of said response, and the demurrer to the response now on file, be considered a demurrer to such answer.

(5) That petitioner relies upon the briefs heretofore filed in this cause and files herewith a short state-
15 ment to which respondent has the right to reply at any time within ten days.

(6) That thereupon this cause be and the same hereby is resubmitted to the Court for final consideration upon the petition, answer and demurrer.

Dated September 2, 1929.

EDGAR WATKINS,
Attorney for Petitioner.
O. H. GRAVES,
Attorney for Respondent.

Order.

Filed Sep. 24, 1929.

In accordance with the stipulation of counsel for the respective parties to this case, dated September 2, 1929, and duly filed herein, it is this 24th day of September, 1929, adjudged and ordered:

1. That the submission of this case to the court upon petition and response, heretofore made, be and the same hereby is withdrawn.

2. That the respondent's response to the relator's petition heretofore filed in this case, be and the same hereby is deemed to have been withdrawn by the respondent, and the same hereby is stricken from the record.

3. That the respondent be and he hereby is permitted to file and serve an answer in lieu of said response, and that the relator's demurrer to said response which is now on file, be permitted to stand and be considered as a demurrer to such answer.

4. That the uncertified copies of the findings of the Secretary of the Interior, of the War Minerals Relief Commission, and of the Commissioner of War Minerals, which are attached to the answer of the respondent which is to be filed as aforesaid, may be considered by the court in its consideration of this case with the same effect as though they were original papers.

5. That this case now be considered as having been resubmitted to the court for final consideration upon the petition, answer and demurrer, and upon the briefs heretofore filed by the parties thereto, and upon the supplemental brief now filed by the relator.

WENDELL P. STAFFORD,
Justice.

Respondent's Answer to the Petition for Mandamus.

Filed Sep. 24, 1929.

For answer to the petition for mandamus in this case the respondent, Ray Lyman Wilbur, says as follows:

1. The respondent admits the allegations of the first paragraph of the petition, subject to the explanation given in the second paragraph of this answer.

2. The respondent says that since the filing of the petition in this case Roy O. West, the respondent named therein, has ceased to be the Secretary of the Interior, and that this respondent, Ray Lyman Wilbur now is the Sec-
16 retary of the Interior, and that he has been substituted as the respondent in this case in the place and stead of the said Roy O. West.

The respondent admits that the duties imposed upon his predecessor in office by the act of March 2, 1919, and the acts amendatory thereof, have now devolved upon him.

3. The respondent refers to the act of March 2, 1919, for an exact statement of its terms. He admits, however, that the excerpts from the act given in the third paragraph of the petition are substantially correct.

4. The respondent admits the allegations of the fourth paragraph of the petition.

5. The respondent admits the allegations of the fifth paragraph of the petition.

6. The respondent admits that relator made claim for losses based on payment of interest, and obligations incurred to pay future interest, on borrowed money, used in complying with stimulation, but denies that the various awards made by the Secretary of the Interior to claimant included interest, but that such awards, as made, actually were paid to and received and accepted by the relator. Respondent further denies that interest constitutes a loss; if, however, it is such in law, it is a loss not subject to reimbursement under the provisions of the act of March 2, 1919.

7. The respondent says that the provisions of the act of November 23, 1921, will appear by reference to the act itself.

The respondent admits that the Hon. Albert B. Fall, a former Secretary of the Interior, did review the claim of the relator, giving it full consideration (Secretary's Opin-

ion, September 28, 1922), and especially the memorandum in review thereof by Assistant Commissioner of War Minerals, John Briar, dated September 22, 1922.

8. Respondent admits that the report of the chief accountant dated September 21, 1922, was duly filed and now appears in the files of relator's said claim; that the same was made for the use of the War Minerals Relief Commission and the Secretary of the Interior, and has no value in the consideration of this review; that it was advisory in its nature, and of no binding effect upon the Secretary of the Interior in the Consideration or disposition of relator's claim. In said report, it was shown that relator had paid out money, and obligated itself to pay out money in the future, as interest on money borrowed to prosecute the production of pyrites. But that relator was compelled to borrow money, or to pay interest, as alleged, is denied.

9. On information and belief the respondent denies the allegations of the ninth paragraph of the petition so far as they state that the relator borrowed money for the purposes therein specified at the request of a former Secretary of the Interior.

He admits that relator was stimulated by a former Secretary of the Interior to increase its production by enlarging its operations. That relator, after some delay, did increase its operations, borrowing the capital to do so, but that the borrowing of the capital to comply with such stimulation was neither urged nor requested by Secretary Lane, his specific request and stimulation being as stated in detail in the report of the Assistant Commissioner Briar, *supra.*

10. The respondent admits the substance of the allegations of the tenth paragraph of the petition, except that he specifically denies that the relator is now entitled to receive any furher allowance under its war mineral claim, because he says that all that was justly and legally due to the relator under its said claim already has been paid to and received and accepted by it. The Secretary of the Interior, in his decision of September 28, 1922, said:

If the claimant contemplated the payment of interest upon this claim, as has been suggested in argument, then this award, of course, does not preclude remedial action by the Congress of the United States acting directly.

11. The respondent admits that the relator's war mineral claim was brought before the Hon. Albert B. Fall, then Secretary of the Interior, and that Secretary Fall made an additional award to the relator in the sum of $469,784.62, in a decision dated September 28, 1922, the respondent says that the amount of this award actually was paid to and received and accepted by the relator, thus making a total of $693,313.79 paid to it on account of its said war minerals claim.

The respondent says that the basis for the Secretary's award, as stated in his decision was as follows:

17 I have investigated this case and listened with great interest and a large degree of sympathy to the statements made by Counsel for the Claimants, and to the arguments advanced with reference to the matter of allowing interest upon this claim; additional allowance for services, and an allowance of an increased amount for compensation for the Free-stimulation plant.

After full consideration, I am confident that the conclusions reached by the Commission are as nearly correct as it is humanly possible to arrive at a just and equitable sum to be awarded in relief; I, therefore, find myself impelled to make the award as recommended, in the sum of Four Hundred Sixty-Nine Thousand, Seven Hundred Eighty-Four Dollars and Sixty-Two Cents ($469,784.62).

The respondent says further that the exact language used by Assistant War Minerals Relief Commissioner, John Briar, in his recommendation to the Secretary of the Interior which is referred to in paragraph 11 of the petition, was:

If I have seemed to deal with it liberally, it was because the record showed that the then Secretary of the Interior, realizing no doubt that this property presented opportunity for the biggest production of pyrites in the entire country, used every means in his power to persuade the claimant to develop it.

12. The respondent admits the allegations of the 12th paragraph of the petition.

13. Answering the allegations of the 13th paragraph of the petition the respondent says that he is not advised what,

if any, action was taken with respect to relator's claim for the payment of interest by other Secretaries of the Interior who held office subsequent to the Hon. Albert B. Fall. The respondent says, however, that he himself, acting through his subordinates, has declined to make any further award to the relator on account of interest alleged to have been paid by it.

14. The respondent says that the provisions of the act of February 13, 1929, will appear by reference to the act itself.

Answering the allegation of the 14th paragraph of the petition that "it is not disputed as a matter of fact that relator suffered net losses by reason of payment of interest on money borrowed and by reason of obligations to pay said interest," the respondent says that he most emphatically denies this allegation. The respondent says that it is disputed as a matter of fact that the relator suffered any such losses. The respondent says that the interest paid by the relator, and its obligation to pay interest as it accrued, represented the payment and the contract to pay a fair price for the use of money borrowed by the relator, and that the use of the money by the relator had a contract value exactly equivalent to the sum paid or agreed to be paid as interest for its use. The respondent says, therefore, that no loss in fact could result to the relator because of its interest payments, as such payments were made for an equivalent value received. The respondent says that the fact that the borrowed money after it came into the possession of the relator may have been lost by the relator in producing or preparing to produce pyrites is a matter entirely separate and distinct from the relator's contract obligation to pay value to his creditor for the use of his money.

The respondent says, therefore, that the ruling of the Hon. Albert B. Fall that interest paid or agreed to be paid by the relator for borrowed money did not constitute a loss within the meaning of the act of March 2, 1919, was right and proper and it is ratified and adopted by this respondent.

The questions of law submitted for review therefore are, (1) Is interest paid and obligations to pay future interest for the use of money a loss? If this question be answered in the negative the controversy is ended, but if in the affirmative, the further question arises, (2) Is it that char-

acter of loss which comes within the purview of the War Minerals Relief Act for reimbursement?

15. Answering the allegations of the 15th paragraph of the petition the respondent again explicitly denies that the relator in fact suffered any loss by paying interest for the use of money.

16. The respondent denies the allegations of the 16th paragraph of the petition.

18 17. Answering the entire petition the respondent says that the act of March 2, 1919, pursuant to which the relator's war minerals claim No. 1 was filed, authorized the Secretary of the Interior to adjust, liquidate and pay such net losses as had been suffered by any person, firm, or corporation by reason of producing or preparing to produce pyrites, and other specified minerals, under the conditions set forth in the act. The act provided further that the Secretary should make such adjustment and payment in each case as he determined to be just and equitable, and that no claim should be allowed or paid by the Secretary, unless it should appear to his satisfaction that the expenditures made or obligations incurred under the terms of the act were made or incurred by the claimant in good faith for or upon property which contained the minerals specified, and that no profit of any kind should be included in the allowance of any of said claims.

The respondent says that the authority and duty to construe and interpret the various provisions of the act in question were vested and imposed by Congress in and upon the Secretary of the Interior, and that in the exercise and discharge of their authority and duty as aforesaid, the various Secretaries of the Interior have construed the act as intending that the same rules for the adjustment of claims filed under its provisions should be applied to all claimants alike, and that the act should be administered without discrimination in favor of any particular class of claimants.

The respondent says that more than a thousand claims were filed under the provisions of the act, and that they were presented by claimants who at the date of the passage of the act owned property, real and personal, upon or in connection with which losses thereafter were claimed; by claimants who owned money at the date of the passage of the act which they thereafter invested in such property,

and in the development and operation of the same; and by claimants who borrowed the money of other persons and then invested it in such property, and in the development and operation of the same.

The respondent says that the various Secretaries of the Interior, including himself, were unable to find any provision in the act of March 2, 1919, which authorized them to make an allowance in favor of one who invested his own money in the purchase, development and operation of such property, on account of the use of the money so invested. Accordingly, the respondent and his predecessors during the ten years which have elapsed since the passage of the act of March 2, 1919, have uniformly, and without exception so far as is known to this respondent, refused to make any allowance for the use of money in favor of war minerals claimants who invested their own money in producing or preparing to produce war minerals within the terms of that act.

The respondent says also that he and his predecessors were unable to find any distinction in law between the use in producing and preparing to produce war minerals of property already owned by a claimant, or the use of property which the claimant had acquired with his own money, and the use of property acquired by a claimant with borrowed money. They also were unable to find any distinction between development and operation of such property by a claimant who employed his own money for that purpose, and the development and operation of such property by a claimant who employed borrowed money for that purpose. The respondent and his predecessors therefore have uniformly refused to make any allowance to a claimant on account of borrowed money by reimbursing it for the interest paid by it for the use of the borrowed money. The respondent says that any other interpretation of the act would have resulted in a discrimination in favor of claimants who were borrowers as against claimants who were owners or purchasers, and would have been against the plain intention of Congress as understood by himself and his predecessors.

17-a. The respondent says further that he and his predecessors have found as a matter of fact that interest paid by a borrower for the use of money does not represent a loss to the borrower, because the use of the money which

the borrower enjoys has an agreed contract value which is exactly equivalent to the interest paid for the use of the money. The respondent says that the fact that borrowed money may have been employed by a war minerals claimant in producing and preparing to produce war minerals, instead of in some other way, and may have been lost in so doing, does not alter the case. The respondent and his predecessors therefore have interpreted the act of March 2, 1919, as prohibiting awards to claimants on account of interest paid for money lost in producing or preparing to produce war minerals, and have restricted their awards to the loss of the money itself.

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17-b. The respondent says further that he and his predecessors have found as a matter of fact that to allow interest to a claimant upon money borrowed by it and thereafter employed in producing or preparing to produce war minerals would be to include a profit in the allowance of its claim, contrary to the provisions of the act of March 2, 1919. The respondent says that a war minerals claimant who borrowed money and employed it in producing or preparing to produce war minerals, profited to the extent of the value of the use of the money, and that the payment of interest by the claimant to the lender as compensation for the use of such money was not a loss, but simply was a surrender of the profit. The respondent says that for the United States to reimburse a claimant for interest paid upon money borrowed by it and thereafter employed in producing or preparing to produce war minerals, would be nothing less than an allowance of profit to the claimant in the adjustment of its claim. The respondent and his predecessors therefore have construed the act of March 2, 1919, as prohibiting the allowance of interest paid upon borrowed money, for that reason also.

17-c. The respondent says further that he and his predecessors in office have construed the provision of the act of March 2, 1919, "that no claim shall be allowed or paid by the Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained" certain specified minerals, as meaning exactly what it says. The respondent says that the payment of interest or an obligation

to pay interest on borrowed money by a war minerals claimant was a matter entirely separate and distinct from the expenditure of the money itself for or upon mineral property, and from the obligations incurred for or upon such property, and that therefore he and his predecessors have construed the act of March 2, 1919, as prohibiting the allowance of a claim for the payment of interest, for that reason also.

The respondent says that the foregoing constructions placed upon the act of March 2, 1919, by himself and his predecessors all are warranted by the express language of the act itself, and that none of them is capricious or arbitrary, and that as these constructions of the act all have been consistently adhered to in the Department of the Interior for ten years past, and since the passage of the act of March 2, 1919, such constructions and interpretations of the act should be respected by the courts, and accepted as stating the true intention of Congress with respect to claims for losses by war minerals claimants on account of interest paid on borrowed money.

18. The respondent says further that the relator's war minerals claim No. 1 was the first claim to be filed under the act of March 2, 1919, and that the decisions made with respect to it were among the earliest ruling of the Secretary of the Interior made in the administrations of that act. The respondent says that the language used by the Hon. Albert B. Fall, in his decision of September 28, 1922, which is cited by the relator in paragraph 12 of its petition, wherein he said, "If the Congress contemplated the payment of interest upon this claim, as has been suggested in argument, then this award of course does not preclude remedial action by the Congress of the United States acting directly," was a direct suggestion to Congress to set the Secretary of the Interior right if he was wrong in deciding that interest paid for borrowed money was not within the purview of the act of March 2, 1919. The respondent says that although the question of interest has been litigated in the courts, and although Congress has passed further legislation with respect to war minerals claims, Congress has never declared or intimated that an award should be made on account of interest payments, but through eight years of silence has tacitly acknowledged the correctness of

Secretary Fall's interpretation of its intention in that respect as expressed in the act of March 2, 1919.

19. The respondent, for the reasons hereinbefore stated, denies that he or his predecessors in office have committed any error in law by denying an award to the relator
20 for losses alleged to have been sustained by it through the payment of interest upon borrowed money.

Having fully answered the petition the respondent asks to be hence dismissed with costs.

RAY LYMAN WILBUR,
Secretary of the Interior,
By JOS. M. DIXON,
Acting Secretary of the Interior.

DISTRICT OF COLUMBIA, *ss:*

Jos. M. Dixon, being first duly sworn, on his oath says that he has read the foregoing answer by him subscribed, and that he knows the contents thereof, and that the matters therein stated of his own knowledge are true, and those stated upon information and belief he believes to be true.

JOS. M. DIXON.

Subscribed and sworn to before me this 13 day of August, 1929.

[NOTARIAL SEAL.] W. BERTRAND ACKER,
Notary Public in and for D. C.

Memorandum.

Exhibits filed with the answer same as those filed with response to the rule to show cause.

21 *Decree on Mandate.*

Filed December 15, 1931.

* * * * * * *

The mandate of the Supreme Court of the United States in this cause having been received and recorded in this court; therefore, this 15" day of December, 1931, it is, by the court, considered and adjudged that a writ of mandamus do issue out of and under the seal of this court,

directed to Ray Lyman Wilbur, as Secretary of the Interior, commanding him forthwith to proceed to ascertain the amount of interest that, at the time of the passage of the act of Congress of March 2, 1919, Chapter 94, had been paid or the obligation incurred by the relator for money borrowed and lost in producing and preparing to produce pyrites at the request or demand of the Department of the Interior to supply the urgent needs of the Nation in the prosecution of the World War, and for which in justice and equity the relator is entitled to receive reimbursement from the appropriations made by Congress for the payment of such losses; and to thereupon proceed with the final adjustment of the relator's claim, filed pursuant to the aforesaid act of Congress of March 2, 1919, Chapter 94, in accordance with the facts as determined by him. And it also is considered that the relator do recover against the respondent in this cause, his costs and charges by him expended, to be taxed, and that the relator have execution thereof.

ALFRED A. WHEAT,
Chief Justice.

OK as to form.
O. H. GRAVES,
Atty. for Defendant Ray Lyman Wilbur.

22 *Petition to Enforce Decree.*

Filed April 18, 1932.

* * * * * * *

Now comes Chestatee Pyrites and Chemical Corporation and respectfully prays the Court that it enforce by appropriate order or orders its final decree herein entered on the 15th day of December, 1931 and for cause therefor shows:

I. This is a proceeding brought under authority of the Act of Congress approved February 13, 1929, Chapter 182, 45 Stat. 1166; that the cause was appealed to the Court of Appeals of the District of Columbia where, on February 2, 1931, it was decided in favor of petitioner, the relator herein (see United States v. Wilbur, 47 Fed. (2) 424); and that thereafter on writ of certiorari to the Supreme Court of the United States, that Court on December 7, 1931,

affirmed the Court of Appeals and issued its mandate to this Court.

II. That this case involved the issue of whether or not relator, Chestatee Pyrites & Chemical Corporation, was, under the law and the admitted facts, entitled to have an award for its net losses for interest paid and for obligations incurred to pay further interest, which issue had been before the filing of this proceeding determined by Secretaries of the Interior adversely to relator. In the Original petition of this suit it is alleged:

"Respondent herein declined and refused to make award in allowance for such expenditures or obligations incurred, admitting that interest had been paid on borrowed money and that obligations had been incurred to pay further interest."

23 And in paragraph VIII it was alleged—

"That said chief accountant by report filed September 21, 1922, among other things found and reported in substance that in compliance with the demands and request of the Government and in a legitimate effort to produce and in producing pyrites, relator had been compelled to borrow and expend large sums of money and had agreed to pay interest thereon; that prior to November 11, 1918, relator had actually paid interest in a large amount, and there had accrued on said loans further interest that was then unpaid. Other amounts have since accrued and are yet accruing."

It was further alleged in the original petition that—

"The respondent erred in law in not finding that moneys paid and obligations incurred for the use of money borrowed, as aforesaid, resulted in net losses."

On these allegations of fact it was prayed that a writ of mandamus issue to the Secretary of the Interior requiring him

"to make an award of such amount as the facts show is due for interest paid on borrowed money, and for *obligations* to pay interest thereon."

Respondent, the Secretary of the Interior, first filed a response to said petition, denying none of the allegations

therein, and joining in the prayer for a determination of the legal issues but later filed an answer in which he said:

"Respondent admits that relator made claim for losses based on payment of interest and obligations incurred to pay *future interest* on borrowed money,"

and in answering paragraph 8 of the petition herein respondent said:

"Respondent admits that the report of the chief accountant dated September 21, 1922, was duly filed and now appears in the files of relator's said claim; that the same was made for the use of the War Minerals Relief Commission and the Secretary of the Interior, and has no value in the consideration of this review; that it was advisory in its nature and of no binding effect upon the Secretary of the Interior in the consideration or disposition of relator's claim. In said report it was shown that relator had paid out money and obligated itself to pay out money
24 in the future as interest on money borrowed to prosecute the production of pyrites; but that relator was compelled to borrow money or to pay interest, as alleged, is denied."

Respondent then set up as exhibits to his answer Exhibits A to E inclusive showing the findings of his office. In said answer, stating the questions of law there involved, respondent stated such question as follows:

"Is interest paid and obligations to pay *future interest* for the use of money a loss?"

It is therefore respectfully submitted that definitely there was involved in the hearing of this case the issue both as to the interest items that had been paid and as to the continuing obligations to pay interest for the future.

III. Respondent himself in his petition to the Supreme Court for its writ of certiorari presented as one of the reasons why such writ should be granted, the following:

"There are a large number of cases now pending which will be decisively disposed of by the decision of this Court upon these two questions presented by this case [2]" (Pet. p. 10).

Figure 2 in the quotation above referred to a statement dated April 29, 1931 from the Solicitor of the Department of the Interior in which he is quoted as saying:

"* * * the amount claimed for interest would be increased and possibly more than doubled if computed to the date of settlement of the claim." (Pet. p. 11.)

IV. Notwithstanding the respondent herein admitted as shown in the next preceding paragraph, that he knew that relator was claiming that interest should be "computed to the date of settlement," he made no distinction in his specifications of error between interest that had been paid and interest that was increasing and might be doubled "if computed to the date of settlement."

V. The issue made in the pleadings in this case was known to respondent and his predecessors for many years before this proceeding was filed and relator has uniformly for more than ten years, been urging orally and by brief, the right to have its obligations for interest paid to whatever date they run.

VI. In a memorandum argument filed on or about January 19, 1922 with the predecessor of respondent by counsel for relator, after citing authorities it was said:

"Under these authorities we believe that interest should be calculated from January 1, 1919, on the total amount of the claim allowed, to October 18, 1919, and then after deducting from the principal and interest due on that date the payment made on that date, further interest should be added on the remainder until the date of the final allowance on this claim."

A similar statement was made in a brief filed on or about April 6, 1922.

VII. In a further argument addressed to "Hon. Edward C. Finney, Asst. Secretary and Judge Ira E. Robinson, Chairman, War Minerals Relief Board" and dated September 4, 1922, in which interest was calculated to "date of award, say 9-16-22," it was stated "claimant is accruing interest charges of about $45,000.00 annually on its obligations incurred."

VIII. Respondent has not in this Court, the Court of Appeals or the Supreme Court of the United States con-

tended that there was any legal difference in claim-
26 ant's rights for interest paid on borrowed money and obligations incurred to pay future interest on borrowed money, the payment having been made and the obligations having been incurred between April 6, 1917 and November 12, 1918. Such contention not having been made, it would have been academic for counsel for relator to discuss it and there was no distinction made in any argument by either side in this proceeding here or on appeal between the two kinds of interest: that paid and that to be paid.

IX. Upon the coming down of the mandate and on the 15th day of December, 1931, this Court entered, in the form prepared by respondent's counsel with the changes supplied by relator's counsel and agreed to by respondent's counsel, its final decree and therein ordered the writ of mandamus to issue—

"directed to Ray Lyman Wilbur as Secretary of the Interior, commanding him forthwith to proceed to ascertain the amount of interest that at the time of the passage of the Act of Congress of March 2, 1919, Chapter 94, had been paid or the obligation incurred by the relator for money borrowed and lost in producing and preparing to produce pyrites at the request or demand of the Department of the Interior to supply the urgent needs of the nation in the prosecution of the war."

The other parts of the decree are not material to an understanding of this issue, but a copy of such decree is attached hereto, marked "Exhibit A," made part hereof and reference thereto prayed. Copy of this decree was duly served upon the respondent on or about December 15, 1931.

X. After the entry of said decree and under the advice of his counsel, respondent required claimant to an-
27 swer certain questions. Two of these questions with the answers thereto are as follows:

"23. What is the amount of your claim for interest actually paid? $211,670.58. See itemized claim hereto attached Exhibit A, Schedule 1, page 2; also Schedules 3, 4 and 5.

"24. What is the amount of your claim for interest still to be paid? $357,057.30 accrued unpaid through Dec. 31, 1931."

XI. Under the specified conditions of said Act of March 2, 1919, relator, petitioner herein, had purchased property and had assumed obligations on said property, evidenced by two notes, one dated March 17, 1917, for $30,000.00, one dated May 15, 1917, for $20,000.00, said two notes being assumed for a valid consideration by relator subsequent to June 18, 1917, and prior to November 12, 1918 (the admitted stimulation period), and obligations were incurred by the assumption of said notes to pay interest thereon, said notes being executed upon a form of which Exhibit B hereto is a copy and said Exhibit is here referred to and made part hereof.

XII. That from July 21, 1917, to August 12, 1918, relator borrowed other moneys and obligated itself to pay the principal sum of $645,000.00, with interest thereon, in addition to $50,000.00 and interest thereon named in the next preceding paragraph, and borrowed other moneys to the total amount of $30,000.00 within the admitted stimulation period and paid interest thereon amounting to $2,002.50; and relator also gave other notes to cover other obligations incurred within said admitted stimulation period to various persons totalling an amount of $59,649.11 and paid
28 interest thereon amounting to $4,857.80; that prior to November 12, 1918, interest had been paid, as found by the predecessor of relator, on these obligations in the sum of $40,795.13 and the obligations to pay interest incurred as aforesaid continued after November 12, 1918, and fell due in some instances on dates later than March 2, 1919. These have been met only to the extent that petitioner's net losses heretofore paid by respondent have enabled it to pay and there is now due from respondent for interest paid and for interest on such obligations so incurred to pay interest, the sum of $568,727.88 accrued to December 31, 1931, and interest on the principal sums is continuing and will continue until paid. Since December, 1931, respondent has paid relator $44,451.45 leaving a balance due relator as of December 31, 1931, of $524,276.43.

XIII. In disregard of the law and of the specific command of this Court the respondent herein has failed and refused to pay the net losses suffered by relator from obligations incurred to pay interest beyond March 2, 1919, and has erroneously held that it was his duty under said decree to pay interest that had been paid by relator for which the obliga-

tions had been incurred only to March 2, 1919, thus, as petitioner submits, arbitrarily refusing to pay obligations incurred and interest on money borrowed although such obligations were incurred prior to November 12, 1918, and were existing on and prior to March 2, 1919, and were and are continuing to run thereafter.

XIV. Respondent has paid relator $44,451.45 on account and without prejudice, has in violation of said decree of December 15, 1931, refused to consider obligations included in said decree beyond March 2, 1919, and has arbitrarily limited said decree and the statute by fixing March 2, 1919, as the time beyond which obligations are not to be considered and relator is advised and believes, and therefore alleges, that the respondent will continue in his refusal to carry out the decree in this respect unless the court take further action to enforce its said decree.

XV. The relator further shows to the court that in the respects herein pointed out the action of the respondent is further in violation of the acts of Congress in such cases made and provided, to-wit, the various acts known as the War Minerals Relief Legislation, in that no such limitation as respondent seeks to set up is found or can be found in said statutes; and relator further says that any question in this respect is also foreclosed by the decree herein, and that had the respondent wished to raise any such question he could and should have raised the same before a final decree was entered herein.

XVI. Relator further shows that for more than ten years it has sought to obtain an award for its net losses on obligations to pay interest to the full extent of such obligations and that the extracts from the record herein establish that this suit has proceeded from its inception upon the theory that there was no such limitation as is now sought to be set up. Respondent and his predecessors in office have uniformly recognized that such was the issue and it is now too late to claim otherwise.

Wherefore, petitioner herein, relator in this cause, claimant before the Department of the Interior, respectfully prays the Court:

1. To issue a rule returnable at a short time to be fixed requiring the respondent, Ray Lyman Wilbur, to show cause, if any he has, why he has not complied with the said decree of this Court;

2. That this Court specifically direct respondent, Ray Lyman Wilbur, as Secretary of the Interior, forthwith to award the amount of interest heretofore paid by relator and also the amount of interest for which petitioner, Chestatee Pyrites and Chemical Corporation is obligated to pay for money borrowed, to calculate such interest on such obligations incurred prior to November 12, 1918, according to the terms and tenor of the obligations to the date that payment therefor is made and to make an award of that amount, less credits against such obligations that should be properly applied from payments heretofore received by relator;

3. That this Court command said Secretary to make such adjustment and payment within a short time to be named and upon failure so to do that this Court proceed to enforce its decree in an appropriate way; and

4. That such other and further orders be entered as may be meet and proper in the premises and as may be necessary to enforce the law and the mandate of this Court, for all of which petitioner respectfully prays.

EDGAR WATKINS,
MARION SMITH,
Attorneys for Chestatee Pyrites & Chemical Corporation.

31 EXHIBIT "A".

In the Supreme Court of the District of Columbia.

At Law.

No. 76361.

UNITED STATES OF AMERICA ex Rel. CHESTATEE PYRITES & CHEMICAL CORPORATION,

v.

RAY LYMAN WILBUR, Secretary of the Interior.

The mandate of the Supreme Court of the United States in this cause having been received and recorded in this court; therefore this 15" day of December, 1931, it is, by the court, considered and adjudged that a writ of mandamus do issue out of and under the seal of this court, directed to Ray Lyman Wilbur, as secretary of the Interior, command-

ing him forthwith to proceed to ascertain the amount of interest that, at the time of the passage of the act of Congress of March 2, 1919, Chapter 94, had been paid or the obligation incurred by the relator for money borrowed and lost in producing and preparing to produce pyrites at the request or demand of the Department of the Interior to supply the urgent needs of the Nation in the prosecution of the World War, and for which in justice and equity the relator is entitled to receive reimbursement from the appropriations made by Congress for the payment of such losses; and to thereupon proceed with the final adjustment of the relator's claim, filed pursuant to the aforesaid act of Congress of March 2, 1919, Chapter 94, in accordance with the facts as determined by him. And it also is considered that the relator do recover against the respondents in this cause, his costs and charges by him expended, to be taxed,
32 and that the relator have execution thereof.

ALFRED A. WHEAT,
Chief Justice.

O. K. as to form.
O. H. GRAVES,
Atty. for Defendant, Ray Lyman Wilbur.

33 EXHIBIT "B".

$—. —— —, ——.

— after date, for value received, — promise to pay to the order of —— —— — dollars, at ——, with eight per cent interest from maturity, together with all costs of collection, including Attorney's fee of 10% if collected at law.

As to the obligations herein contained, the maker and each endorser hereof waives all rights of exemption under the laws of the state in which he now resides, or of any other state, or of the United States, as against this debt or any renewal thereof; and each further waives demand, protest, and nonpayment. As collateral security for this obligation or any renewal thereof, the following described property is pledged, with power on the part of the holder hereof to sell the same publicly or privately, with or without advertisement, if the indebtedness secured hereby is not paid at maturity, and to become a purchaser at such sale. Witness our hands and seals.

No. — —— ——. [L. S.]
—— ——. [L. S.]

Address: ——.

34 STATE OF GEORGIA,
County of Fulton:

Personally appeared before the undersigned officer, George L. Pratt, an officer of Chestatee Pyrites & Chemical Corporation and as such authorized to make this affidavit, who being duly sworn, on oath says that he has read the foregoing petition and that the statements therein are true except where stated on information and belief and where so stated he believes them to be true.

GEORGE L. PRATT.

Subscribed and sworn to before me this 16th day of April, 1932.

[NOTARIAL SEAL.] ELSIE W. FREEMAN,
Notary Public, State at Large, Ga.

My commission expires Dec. 21, 1935.

35 *Respondent's Answer to the Rule to Show Cause.*

Filed April 27, 1932.

The Respondent, Ray Lyman Wilbur, as Secretary of the Interior, for answer to the rule to show cause issued in this case on April 18, 1932, requiring the respondent to show cause why the prayers of a "Petition to Enforce Decree," filed herein by the Chestatee Pyrites & Chemical Corporation should not be granted, says as follows:

1. The original petition of the Chestatee Pyrites & Chemical Corporation, the relator in this case, specifically prayed a writ of mandamus directing the Secretary of the Interior, as the respondent in the case, to take jurisdiction of the relator's claim for expenditures made and obligations for interest incurred, which had been filed pursuant to the War Minerals act of March 2, 1919, and to adjust and pay relator's net loss, consisting of interest paid on borrowed money and obligations to pay interest thereon.

The action was entitled "United States of America *ex rel.* Chestatee Pyrites & Chemical Corporation v. Roy O. West, Secretary of the Interior." Upon the resignation of Secretary West, the action was revived against the respondent, as his successor in office. The title of the case, as aforesaid, was in the form appropriate to proceedings for mandamus.

The petition was dismissed by a judgment of this
36 court dated March 2, 1930, wherein it was described as "The Petition for Review and Mandamus."

The judgment of this court was reversed by the Court of Appeals in a judgment dated February 2, 1931 (47 Fed. (2d) 424), wherein the court said that the relator had filed a petition in the lower court asking that court to "issue a writ of mandamus" directing the Secretary of the Interior to take jurisdiction of, and to adjust and pay relator's losses consisting of interest on borrowed money and obligations incurred to pay for the interest thereon.

The case thereafter was reviewed by the Supreme Court of the United States, which rendered a decision on December 7, 1931 (284 U. S. 231), wherein the judgment of the Supreme Court of the District of Columbia was described as a judgment which dismissed a petition for mandamus against the Secretary of the Interior.

The Supreme Court said that the case would be "remanded to the Supreme Court of the District of Columbia with directions to award a writ of mandamus requiring the Secretary of the Interior to proceed to an examination and adjustment of the claim in question conformably to the statutes as here construed." Thereupon the case was remanded to this court by a mandate framed in conformity with the opinion of the Supreme Court.

Thereafter, pursuant to the aforesaid mandate, the Chief Justice of this court, on December 15, 1931, entered a judgment in this case, wherein it was "considered and adjudged that a writ of mandamus do issue" directed to this respondent, commanding him to perform the duty therein specifically set forth. A copy of the court's judgment is attached to the Petition to Enforce Decree as Exhibit "A".

37 From all of the foregoing facts it appears clearly that this case, Law No. 76361, is a common law action for mandamus, such as is contemplated by the act of March 3, 1901 (31 Stat. 1189, 1390); D. C. Code of 1901, Chapter 42; D. C. Code of 1929, Title 24, Part 2; and that as such it is to be governed by the principles of the common law respecting mandamus (*Kendall* v. *United States*, 12 Peters; 37 U. S. 525, 613), and by the provisions of the said act of March 3, 1901, as embodied in the Code.

Nowhere, either at common law, in the act of March 3, 1901, or in the decisions of the courts of this District, or of the Supreme Court of the United States on appeal from the courts of this District, is any such practice or procedure

authorized as that followed by the relator in its so-called "Petition to Enforce Decree."

There is no decree in this case to be enforced, as the action of the court was by judgment, and not by decree. (See Section 1279, Code of 1901.) The relator has obtained a common law judgment which adjudges that a writ of mandamus do issue out of and under the seal of this court, directed to the respondent, and commanding him to do certain things. This judgment measures and limits the rights of the relator in this case, and affords it a plain and adequate remedy through the writ of mandamus for all of the grievances complained of in its "Petition to Enforce Decree," if in fact any such grievances exist. The judgment in question directs nothing more than the issuance of the writ of mandamus addressed to the respondent. The office of this writ is to define the exact duties which the respondent is required to perform; to advise the respondent specifically with respect thereto; to require exact compliance with the court's command within a specified time; and to afford the respondent an opportunity to show to the court, in his return to the writ, his obedience to its command.

38 The judgment does not execute itself, but by its own terms it is to be enforced through the writ of mandamus. This method of enforcing the judgment is exclusive, and the respondent can be required to take notice of the judgment only by a writ of mandamus issued under the seal of this court.

The "Petition to Enforce Decree," filed by the relator, is not authorized or recognized either by the common law or by the laws of this District, and it, therefore, should be dismissed forthwith, and the relator should be remitted to its proper remedy through the writ of mandamus.

2. Further answering the rule to show cause, the respondent says that the judgment entered in this case does not award interest after March 2, 1919, but that it merely provides for the issuance of a writ of mandamus commanding the Secretary of the Interior to ascertain the amount of interest which, at the time of the passage of the act of March 2, 1919, had been paid, or which was then due upon obligations incurred prior to that date.

After the rendition of the judgment in question, and in anticipation of the writ of mandamus provided for therein,

the respondent proceeded forthwith to ascertain the amount of interest that at the time of the passage of the act of Congress of March 2, 1919, had been paid or the obligations incurred by the relator for money borrowed and lost in producing and preparing to produce pyrites at the request or demand of the Department of the Interior to supply the urgent needs of the Nation in the prosecution of the World War, and for which in justice and equity the relator was entitled to receive reimbursement from the appropriation made by Congress for the payment of such losses.

After a careful and complete review of relator's War Minerals claim, and of the voluminous records of the
39 War Minerals Relief Commission with respect thereto, including all of the evidence submitted with respect to the claim, as well as the reports of examiners and auditors, and the various statements, arguments and briefs submitted by the relator, respondent ascertained as a matter of fact that the amount of interest that at the time of the passage of the act of Congress of March 2, 1919, had been paid or the obligations incurred by the relator for money borrowed and lost in producing and preparing to produce pyrites at the request or demand of the Department of the Interior to supply the urgent needs of the Nation in the prosecution of the World War, and for which in justice and equity the relator was entitled to receive reimbursement from the appropriation made by Congress for the payment of such losses, was $44 451.45.

The respondent thereupon proceeded with the final adjustment of the relator's claim filed pursuant to the act of Congress of March 2, 1919, in accordance with the facts determined, as aforesaid, and as a result of such adjustment, awarded the relator the further and additional sum of $44,451.45, which thereafter was paid to and was actually received and accepted by the relator.

The respondent says that through his action as aforesaid, he complied fully in all respects with the judgment of the court in this case, and that nothing now remains to be done on his part in obedience to the said judgment.

The respondent says that in the final adjustment of the relator's claim, as aforesaid, he ascertained as a matter of fact that awards totaling $693,313.79 previously had been paid to the relator in the adjustment of its said claim, and

that the awards in question to a large extent were made on account of items of the relator's said claim which represented investments of the money obtained by the relator upon its interest-bearing obligations. The respondent says that he also ascertained as a matter of fact that instead of applying the amounts of those awards, so far as was necessary, to the discharge of its interest-bearing obligations which were reflected in the amounts awarded, the relator used the money for various other purposes, and permitted its interest-bearing obligations to remain outstanding and unpaid.

The respondent says that he thereupon determined, as a matter of fact, that it would not be in accordance with justice and equity to award or pay interest upon the relator's interest-bearing obligations, except to the extent of $44,451.45, for the reasons, among others, that the principal amount of such indebtedness still outstanding had been indirectly included in awards previously paid to the relator, as aforesaid.

3. Further answering the rule to show cause, the respondent says that the so-called "Petition to Enforce Decree" filed in this case is nothing more or less than an attempt, through a petition in the nature of a bill of review in equity filed in a common law action, to obtain a trial *de novo* on the merits of a cause which already has been fully determined by a final judgment at law entered pursuant to a mandate of the Supreme Court of the United States.

The respondent says that as such a proceeding was not authorized by law, the prayers of the petition should not be granted.

4. Further answering the rule to show cause, the respondent says that the court's decision was based upon the provisions of section 5 of the act of March 2, 1919 (40 Stat. 1272, 1274), which are framed in the past tense in so far as they authorize the Secretary of the Interior "to adjust, liquidate and pay such net losses as *have been suffered*" by any person, firm or corporation by reason of producing or preparing to produce certain minerals under the conditions specified in the act. (Emphasis supplied.)

41 The respondent also says that the Supreme Court of the United States, in its decision in this case (284 U. S. 238), has said that—

"The amount of interest that *at the time of the passage of the Relief Act March* 2, 1919, *had been paid or incurred* by relator for money borrowed and lost in producing and preparing to produce pyrites upon the specified conditions is to be taken into account in determining the amount of its net loss as of that date,"

and the court also said that the Secretary of the Interior "must be satisfied, and determine as a matter of fact, that an allowance on account of *such interest* is just and equitable and that *the loss* is one for which relator in justice and equity is entitled to be reimbursed from the appropriation." (Emphasis supplied.)

The respondent says that the language of the War Minerals act of March 2, 1919, and the language used by the Supreme Court of the United States in deciding this case, being in the past tense, apparently limits compensable interest to interest paid prior to March 2, 1919, and to unpaid interest accrued to that date.

In this view of the case, the respondent already has complied with the requirement of the judgment of this court, as he has awarded and paid to the relator the full amount of all interest paid by it prior to March 2, 1919, as well as the amount of all unpaid interest accrued to that date; totaling $44,451.45.

The respondent says further that should this court be of the opinion that the Supreme Court of the United States, in its decision of this case, has not directly determined that the computation of the amount of interest that is payable to the relator as a loss sustained under the terms of the War Minerals act of March 2, 1919, stops at that date, yet the respondent still has fully complied with the requirements of the judgment of this court, as entered in accordance with the mandate of the Supreme Court of the United States.

The respondent says that the Supreme Court, in its opinion in this case, has said that the respondent, in
42 making an award on account of interest, "upon a consideration of all the circumstances * * *,

must be satisfied, and determine as a matter of fact, that an allowance on account of such interest is just and equitable and that the loss is one for which relator in justice and equity is entitled to be reimbursed from the appropriation."

The respondent says that in compliance with the requirement aforesaid, he has determined, as a matter of fact, that it would not be just and equitable to award the relator any interest computed beyond March 2, 1919, as a loss sustained under the terms of the War Minerals act.

The respondent says that he reached this conclusion by reason of the fact that the awards of $693,313.79 heretofore paid to the respondent, made it possible for the respondent to discharge its interest-bearing obligations in full and in that way to stop the running of interest, and also because of the reasons stated below.

The respondent says that in determining what interest in justice and equity should be paid to War Minerals claimants, it was necessary for him to fix a limit of time beyond which the payment of interest would, in his judgment, cease to be just and equitable.

The respondent says that justice and equity required that the limit so fixed should be definite, and applicable to all War Minerals claimants alike.

Accordingly, in the discharge of the duty imposed upon him by the act of March 2, 1919, and in the exercise of the discretion vested in him by that act, the respondent determined, as a matter of fact, and he now declares that to award and pay interest computed beyond March 2, 1919, to any War Minerals claimant, would not be just and equitable.

5. Further answering the rule to show cause, the respondent says that the determination of the amount of loss which in justice and equity should be awarded and paid to the relator on account of interest, was a matter com-
43 mitted by law to the sound discretion of the respondent, and that having determined that amount to be $44,451.45, and having paid that amount to the relator, respondent has fully complied with the judgment of this court.

To the end that the court may be more fully advised in the premises, respondent attaches hereto, as a part of this

answer, a copy of an opinion of the Solicitor of the Department of the Interior dated February 3, 1932, and a copy of an opinion of the Attorney General dated April 2, 1932, which are marked Exhibits "A" and "B", respectively.

Having now fully complied with the rule of this court, and having shown cause why the prayers of the "Petition to Enforce Decree" should not be granted, respondent asks that the said rule be discharged and that he be permitted to go without day.

SETH W. RICHARDSON,
Assistant Attorney General.
E. C. FINNEY,
Solicitor, Interior Department.
O. H. GRAVES,
Assistant to the Solicitor.
VICTOR H. WALLACE,
Attorney.
JOHN H. EDWARDS,
Asst. Sec'y Interior Department.

44 EXHIBIT "A."

M-26886.

United States Department of the Interior, Office of the Solicitor, Washington.

February 3, 1932.

The Honorable the Secretary of the Interior.

MY DEAR MR. SECRETARY:

I have received your request for an opinion on certain questions arising in connection with the adjustment of claims filed under section 5 of the act of March 2, 1919 (40 Stat. 1272), as amended, commonly called the War Minerals Relief Act.

The case of *Wilbur* v. *United States of America, ex rel. Chestatee Pyrites & Chemical Corporation*, decided by the Supreme Court December 7, 1931, involved a question whether interest paid or agreed to be paid on borrowed money expended in producing or preparing to produce pyrites constitutes a loss which by the terms of the act of

March 2, 1919, *supra*, the Secretary of the Interior should recognize and pay. The case was before the Court on writ of certiorari to the Court of Appeals of the District of Columbia where the question had been decided in favor of the relator (47 Fed. 2d 424). The Supreme Court sustained the construction placed upon the statute by the Court of Appeals. Mr. Justice Butler, speaking for the Supreme Court used this language:

> The amount of interest that at the time of the passage of the Relief Act March 2, 1919, had been paid or incurred by relator for money borrowed and lost in producing and preparing to produce pyrites upon the specified conditions is to be taken into account in determining the amount of its net loss as of that date. It constitutes a part of relator's expenditures and cost of the undertaking and so is within the terms of the section as amended. *United States* v. *New York*, 160 U. S. 598, 621-624.

The facts as to the claim in question are explained in the submission as follows:

45 The Chestatee Corporation filed a claim under the original act and was awarded and paid, under the original act and amendments, $693,313.79. Included in the claim as originally filed was an item of $40,795.13 for interest paid and accrued. The item was disallowed under the general rule that losses on account of interest paid on borrowed capital were not losses that could be repaid under the War Minerals act. The Chestatee Corporation now presents a claim for $568,727.88 for interest paid and incurred, the amount being found by adding the interest alleged to have been paid and the amount that is alleged to have accrued from the beginning of operations to December 31, 1931.

The first question which you ask me to decide is stated as follows:

> Are admissible interest losses, either paid or incurred, to be reimbursed only to March 2, 1919?

The language used by the Supreme Court in the above quoted paragraph from its decision is precise and unam-

biguous. I see no rational ground for doubt or conjecture as to what the Court meant. To attempt to make it plainer would be like an attempt to reason upon a sum in simple arithmetic. Literally read the Court's decision holds that the date of the passage of the relief act denotes the ultimate date to which interest may be computed as an allowable item of loss thereunder. That is the date upon which the responsibility of the Government terminated. There is no uncertainty of expression, and it must be assumed that the Court meant precisely what its language imports. Why go outside of the language to search for a meaning which it does not reasonably bear, or assume that the Court meant something it has not said. The province of construction lies wholly within the domain of ambiguity and there is here no room for construction.

The logic of the holding seems clear. The act under consideration by the Court was special and limited in its scope. It carefully specified the character and class of claims which might be considered and settled by the Secretary of the Interior. In its opening sentence it reposed authority in him "to adjust, liquidate, and pay such net losses as *have been suffered*" (underscoring supplied). The act speaks in the past tense. It refers to what has been
46 and not to what may be. Its obvious purpose was to reimburse net losses *theretofore* sustained in connection with mining operations undertaken at the instance of one of the specified governmental agencies. Congress did not assume on behalf of the United States responsibility for all losses irrespective of the time when they were incurred. Numerous limitations were placed upon the Secretary, one being to the effect that it must appear to his satisfaction "that moneys were invested or obligations were incurred subsequent to April six, nineteen hundred and seventeen and prior to November twelve, nineteen hundred and eighteen." The act contemplated a speedy adjustment of claims presented under it, as the authority to "consider, approve, and dispose of" such claims was expressly limited to those made and filed within three months from its approval. Clearly, as to the claims thus committed to the Secretary of the Interior for investigation, the statute was wholly retrospective in its operation. The Court, in language that admits of no doubt, has so interpreted the scope and meaning of the act, and in my

opinion you have only the simple and obvious duty of administering the law as the Court has declared it.

The New York case cited by the Court involved a claim against the Government under the act of July 27, 1861 (12 Stat. 276), which directed the repayment of costs, charges and expenses properly incurred by the State in supplying and equipping troops for the suppression of the Rebellion of 1861. A subsequent act, approved March 8, 1862 (12 Stat. 615), declared that the previous act should be construed "to apply to expenses incurred as well after as before the date of the approval thereof." The Court merely held in that case that money *paid* by the State on account of interest accrued on its bonds issued to raise money for the purposes expressed by Congress constituted a
47 part of the costs, charges, and expenses properly incurred by it for those objects. The sole question before the Court was whether interest so paid became a part of the aggregate sum properly paid by the State for the United States. The issue was merely a question of law whether under the statute interest was payable, and the Court said that it was.

In the Chestatee case the Court adhered to the principle of the New York case, saying in substance that interest paid or incurred by relator at the time of the passage of the act should be taken into account in determining its net losses as of that date, viz, March 2, 1919. In the case last decided the Court had under consideration an act much narrower in its terms than that under which the New York claim arose. The relevancy of the date—March 2, 1919, to the relief to be administered is as plain as language can make it. The right to reimbursement was for losses suffered; the right related to things of the past. If a loss had not been suffered or incurred when the act was passed, a claim therefor at that time was clearly outside the statute. Hence, the Court was careful to say, and it declared in language quite plain, that the benefits of the act were restricted, and that the date of its passage must be considered as limiting the aid Congress intended to bestow. Obviously the Court gave effect to the language of the act according to its clear import.

The second branch of your inquiry also relates to interest. The question I am asked to decide is, as I understand it, whether you are bound to recognize and give effect to

State statutes providing for a higher rate of interest than that originally provided for in the contract, after maturity and default in payment of the principal debt.

What I have said above with respect to your first question renders unnecessary an answer to the second branch of your inquiry.

The remaining question which you ask me to decide is, as I understand it, whether in the adjustment and
48 settlement of claims you are required to recognize as a valid source of stimulation published appeals or requests emanating from one of the governmental agencies specified in the act, equally and to the same extent as specific, direct, peremptory demands or requests from one of the said agencies.

Early in the administration of the relief act the Department of the Interior ruled, and the Attorney General was of the same opinion (31 Ops. A. G. 496), that a claimant must have been asked specifically by one of the authorities or agencies named in the act to produce the minerals mentioned. Many claimants complained bitterly of the narrowness and injustice of that ruling and Congress took heed of their complaints in the passage of the act of November 23, 1921 (42 Stat. 322), adding to the first paragraph of section 5 of the original act a provision that "all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said act" expended money "in producing or preparing to produce," and had mailed their claims in time, "if the proof in support of said claims clearly shows them to be based upon action taken in response to such request * * * shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation in said act." As said by the Supreme Court in the case of *Work* v. *Rives* (267 U. S. 175-180) "this amendment was brought about on the recommendation of the Secretary of the Interior, because he had felt obliged, under section 5 as it was, to reject some 600 claims for failure within the time limit to show a direct personal request or demand upon the claimant by the Government agencies named in the act." Under the more liberal provisions of the amendment above
49 set out, many claims theretofore adjudicated or rejected were reopened and published appeals or re-

quests were recognized as constituting effective stimulation.

The practical construction thus placed upon the amendment seems in perfect harmony with its spirit and purpose, and in my opinion you should adhere to that construction.

Respectfully,

(Signed) E. C. FINNEY,
Solicitor.

Approved.

——— ———,
Assistant Secretary.

50 EXHIBIT "B".

Office of the Attorney General, Washington, D. C.

April 2, 1932.

MY DEAR MR. SECRETARY:

I have the honor to reply to your letter of February 4, 1932, in which you request my opinion on certain questions arising in the adjustment of claims of Chestatee Pyrites & Chemical Corporation, filed with you under section 5 of the Act of March 2, 1919, Chapter 94, (40 Stat. 1272, 1274) as amended, commonly called the War Minerals Relief Act. The questions are as follows:

First. Are admissible interest losses, either paid or incurred, to be reimbursed only to March 2, 1919?

Second. In adjusting and settling claims is the Secretary of the Interior bound to recognize and give effect to State statutes providing for a higher rate of interest than that originally provided for in the contract, after maturity and default in payment of the principal sum?

Third. In adjusting and settling claims is the Secretary of the Interior required to recognize as a valid source of stimulation published appeals or requests emanating from one of the governmental agencies specified in the act, equally and to the same extent as specific, direct, peremptory demands or requests from one of the said agencies?

As applied to the case of this claimant, your first question involves an inquiry as to whether the decision of the Supreme Court of the United States rendered December 7, 1931, in the case of *Ray Lyman Wilbur as Secretary of the*

Interior v. *United States of America, ex rel Chestatee Pyrites & Chemical Corporation,* settles the question as to whether interest accrued after March 2, 1919, should be allowed, and the further question whether the judgment entered in the Supreme Court of the District of Columbia on December 15, 1931, pursuant to the mandate of the Supreme Court in the case above cited, requires that interest
51 accrued after March 2, 1919, be allowed. The Chestatee Corporation filed its claim under the War Minerals Relief Act on April 1, 1919, on a form of questionnaire prescribed by your Department. In that claim it made various demands for reimbursement for losses.

Question 27 and the answers contained in that claim are as follows:

27. (a) What amount and rate of interest did claimant pay on loans used in the production, and preparation for production of any of the above enumerated minerals?

See sheet hereto attached marked—Answer to question 27 (*a*).

(b) Are such amounts of interest included in your estimate of losses?

Yes, up to December 31, 1918, *inclusive.*

The sheet attached, containing a further answer to question 27-a, was as follows:

Question. What amount and rate of interest did claimant pay on loans used in the production, and preparation for production of any of the above enumerated minerals?

Answer. To November 11, 1918, 6%, 7% and 8%, total amount $45,326.96. November 12, to December 31, 6%, 7% and 8%, total amount $3,876.81. January 1, to March 1, 1919, 6%, 7% and 8%, total amount $9,040.65. Total to March 1, 1919, $58,244.42.

It will thus be observed that in its original claim the Pyrites Corporation asked for the allowance of interest on borrowed money, and in its answer to question 27-a computed the interest to March 1, 1919, the day before the passage of the Act of March 2, 1919, and did not present any figures for interest accrued between that date and the date of the filing of the claim on April 1, 1919. Consideration of this claim in the Interior Department continued until Sep-

tember 28, 1922, and during that period the claimant (Pyrites Corporation) insisted on an allowance to it, as a loss, of interest on borrowed money and enlarged its original claim by asking for interest accrued after passage of
52 the Act of March 2, 1919. On September 28, 1922, a final decision was rendered by the Secretary of the Treasury, refusing to make any allowance for interest, whether accrued before or after the passage of the Relief Act. The Pyrites Corporation then instituted proceedings in the Supreme Court of the District of Columbia to obtain a writ of mandamus to compel the Secretary of the Interior to consider and allow the interest claimed. The petition for mandamus, filed July 27, 1923, was broad enough in its allegations to raise the question both in respect to interest accrued before and after March 2, 1919. The Supreme Court of the District of Columbia, on January 9, 1924, held that interest on borrowed money was an allowable item and awarded a writ of mandamus, but there is nothing in its opinion to indicate it was making any decision on the question of liability for interest accrued after March 2, 1919. The case went to the Court of Appeals of the District, which filed an opinion on April 7, 1924, affirming the judgment of the District Court. Its opinion says:

"This narrows the case to the single question of law whether the item of interest is embraced within the claim for net losses incurred by relator."

There is no discussion in the opinion on the point now raised and there is nothing to show that the court reached a conclusion one way or another on the method of computation, or whether there should be a cut-off as of March 2, 1919 in computing the losses for interest paid or liability for payment of which had been incurred.

The case went to the Supreme Court, *Work* v. *United States ex rel. Chestatee Pyrites & Chemical Corporation* (267 U. S. 185). The briefs in that case in the Supreme Court discuss only the general question as to whether interest on borrowed money was an allowable item. The Supreme Court reversed the judgment of the courts below on the ground that the decision of the Secretary was final and the courts had no jurisdiction to review it. It said in its opinion:

53 "In making the award the item of interest claimed of more than $40,000 on the amount borrowed was disallowed. The mandamus herein issued to compel the consideration and allowance of this interest."

The Supreme Court thus construed the judgments of the lower courts in the former case as applying only to interest accrued prior to November 11, 1918, as the interest up to that date was approximately $40,000. The Court gave no consideration to the question whether interest accrued after March 2, 1919, liability for which had been incurred prior to that date, was properly allowable. Thereafter, Congress passed the Act of February 13, 1929, allowing claimants to resort to the Supreme Court of the District of Columbia to review final decisions of the Secretary under the War Minerals Acts, and the Pyrites Corporation, on February 18, 1929, filed another petition in the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior and for a writ of mandamus to compel him to consider and make an allowance for interest on borrowed money. The Supreme Court of the District held, on March 7, 1930, that interest was not an allowable item. The case was taken to the Court of Appeals of the District on assignments of errors, which do not specifically make a distinction between interest accrued before and interest accrued after March 2, 1919, the date of the passage of the Relief Act, but do refer to claim for interest which "appellant obligated itself to pay for the use of borrowed money," thus claiming not only interest paid but interest unpaid, obligation for which was incurred, although nothing specific was stated respecting the date to which the computation should be made. The Court of Appeals, on February 2, 1931, reversed the action of the Supreme Court of the District, holding that interest was an allowable item. It does not appear that in the Court of Appeals the question as to whether allowance should be limited to interest accrued prior to the passage of the Relief Act was argued, the general assertion by the

54 Government being that interest was not an allowable item at all. The opinion of the Court of Appeals does not specifically deal with the point. The court held, however, that "interest paid or obligated to be paid in this case should be allowed," but, still, what it said was

susceptible of the interpretation that when referring to interest obligated it was distinguishing merely between interest paid and interest unpaid, and the opinion is susceptible of the interpretation that when referring to obligations to pay it included interest accrued to March 2, 1919, but unpaid on obligations theretofore incurred. The case went to the Supreme Court with the resulting decision of December 7, 1931.

I have examined the briefs on both sides in the Supreme Court and am unable to find anything in either of them which directly raised or called to the attention of the court the question whether interest accrued after March 2, 1919, was to be allowed. The Government's brief says nothing on the subject, arguing merely the general question as to whether interest of any kind was an allowable item. The brief of the respondent refers generally to the question "whether interest paid or agreed to be paid by the relator on borrowed money" was an allowable item, but everything said in this brief is susceptible of the interpretation that interest "agreed to be paid" had reference to interest accrued prior to the passage of the Relief Act under an agreement to pay it, entered into subsequent to April 6, 1917, and prior to November 12, 1918, as specified in section 5 of the Relief Act. Notwithstanding the fact that the point was not argued in the Supreme Court, it was lurking in the record, or, to speak a little more forcibly, it stuck out like a sore thumb.

In the petition for mandamus (Record in the Supreme Court, p. 1) it is alleged:

"In the said petition or claim of the Chestatee Pyrites & Chemical Corporation filed as aforesaid on the 5th day of March, 1919, this relator, as part of said expenditures made and obligations incurred, claimed interest paid by it and *due to be paid by it thereafter* on borrowed money." (Italics ours.)

Again, in paragraph VIII of the petition, it was alleged that the relator had borrowed large sums and had agreed to pay interest thereon, and that prior to November 11, 1918, it had paid interest in a large amount, and up to September 21, 1922, "there had accrued on such loans further interest that was then unpaid; other amounts have

since accrued and are yet accruing;" and there are other allegations (R. IV) along the same lines.

The Government, in its presentation of the case in the Supreme Court, seems to have been giving its entire attention to its point that no interest of any kind was an allowable item, although it is apparent from the record that it might have contended, first, that there was no interest whatever allowable, and, second, if any interest was allowable it must be confined to interest accrued up to the date of the passage of the Act of March 2, 1919, on obligations incurred between April 6, 1917, and November 12, 1918.

It is not to be wondered at therefore, that as the point was never argued before it the Supreme Court is not very explicit in its opinion. It did say:

"The amount of interest that at the time of the passage of the Relief Act, March 2, 1919, had been paid or incurred by relator, for money borrowed and lost in producing and preparing to produce pyrites upon the specified conditions, is to be taken into account in determining the amount of its net loss *as of that date.*" (Italics ours.)

It says again:

"It must be shown clearly that such interest was paid or the obligation incurred by a relator at the instance of one of the specified governmental agencies."

Clearly, there is nothing in this to justify the conclusion that the court intended to hold that interest accrued
56 after the passage of the Relief Act on obligations incurred before that date was allowable. On the contrary, the inference is that the court was guarding itself against any statement suggesting the inclusion of interest accrued after March 2, 1919.

In the opinion delivered on the same date in a companion case involving Vindicator Consolidated Gold Mining Company, which dealt with a claim for net loss resulting from the purchase of land, the court is more specific. It said:

"The Secretary is required to proceed to ascertain whether relator, on March 2, 1919, had incurred net loss by reason of the expenditure of $16,259 for such land."

The inference is that losses occurring after March 2, 1919, through further depreciation or shrinkage in value,

of land purchased during "the period of stimulation," the ownership of which was retained after March 2, 1919, were to be excluded. I see no distinction in principle between losses suffered after March 2, 1919, through further shrinkage of land values and losses suffered after March 2, 1919, through continued accrual of interest on obligations previously incurred and which the claimant had not been able or did not see fit to pay off. However, it is too plain for serious argument that the opinion of the Supreme Court does not settle the point in favor of the claimant and that the Supreme Court is in a position where it can say that the specific question as to interest accrued after March 2, 1919, was not argued before it or considered. While it affirmed the judgment of the Court of Appeals of the District, it remanded the case direct to the Supreme Court of the District "with directions to award a writ of mandamus requiring the Secretary of the Interior to proceed to an examination and adjustment of the claim in question conformably to the statutes as here construed. Subject to this direction the judgment of the Court of Appeals in each case is affirmed."

57 The mandate from the Supreme Court of the United States, which was filed in the Supreme Court of the District on December 15, 1931, after the usual recitations, orders—

"That this cause be, and the same is hereby remanded to the Supreme Court of the District of Columbia with directions to award a writ of mandamus requiring the Secretary of the Interior to proceed to an examination and adjustment of the claim in question conformably to the statutes as construed in the opinion of this Court."

There is nothing in it which is controlling.

The judgment entered on the mandate December 15, 1931, in the Supreme Court of the District of Columbia, is as follows:

"The mandate of the Supreme Court of the United States in this cause having been received and recorded in this court; therefore, this 15" day of December, 1931, it is, by the court, considered and adjudged that a writ of mandamus do issue out of and under the seal of this court, directed to Ray Lyman Wilbur, as Secretary of the Inte-

rior, commanding him forthwith to proceed to ascertain the amount of interest that, at the time of the passage of the act of Congress of March 2, 1919, Chapter 94, had been paid or the obligation incurred by the relator for money borrowed and lost in producing and preparing to produce pyrites at the request or demand of the Department of the Interior to supply the urgent needs of the Nation in the prosecution of the World War, and for which in justice and equity the relator is entitled to receive reimbursement from the appropriations made by Congress for the payment of such losses; and to thereupon proceed with the final adjustment of the relator's claim, filed pursuant to the aforesaid act of Congress of March 2, 1919, Chapter 94, in accordance with the facts as determined by him. And it also is considered that the relator do recover against the respondent in this cause, his costs and charges by him expended, to be taxed, and that the relator have execution thereof."

In this final act we find the question still is not specifically dealt with. The judgment is susceptible of the interpretation that the allowable interest is that paid before March 2, 1919, or, if unpaid, that accrued up to that date on obligations previously incurred.

* * * * * * *

The unanimous opinion of those who have considered the question here in the Department is that the Mineral Relief Acts properly construed require a cut-off as
58 of March 2, 1919, on all losses, and require the determination as of that date of the losses suffered, and if the Supreme Court intended to deal with the question at all, it intended to express that conclusion, and certainly its opinion does not amount to a decision the other way.

It is obvious that because of the amounts involved, this question requires judicial decision and that any expression of opinion by me on the law would not set the matter at rest or satisfy the claimants. The question remains how a further judicial consideration of the point may be had in the case of the Pyrites Corporation.

* * * * * * *

I am returning herewith the files which the solicitor sent to me this morning, which include the original claim of the Pyrites Corporation, its revised questionnaire filed recently, and the attested copy of the decree entered in the Supreme Court of the District which shows the interlineation.

I am not sure that with this disposition of the matter there is any necessity for answering your second question dealing with cases where the rate of interest paid by the claimant resulted from the application of a state statute, fixing the rate of interest after maturity. My impression is that what you would be required to ascertain is the loss suffered by the claimant through the necessity of paying interest, and it would be immaterial whether that loss resulted from contract or from the application of a state statute.

An affirmative answer to your third question is required by the provisions of the Act of November 23, 1921, c. 127, 42 Stat. 322. I shall not undertake to enlarge upon the opinion of your Solicitor, which seems to me to cover that point adequately.

Very truly yours,

(Signed) WILLIAM D. MITCHELL,
Attorney General.

Honorable Ray Lyman Wilbur, Secretary of the Interior, Washington, D. C.

59 *Traverse of the Answer of Respondent, Ray Lyman Wilbur.*

Filed May 2, 1932.

* * * * * * *

Comes now Chestatee Pyrites & Chemical Corporation and traverses the respondent's answer to the Rule to Show Cause filed herein on the 27th day of April, 1932 and respectfully shows to the Court:

I. Respondent says, in substance, that the exclusive method of enforcing the judgment herein is through the writ of mandamus. This is a legal contention but it implies an erroneous statement of fact. The facts are that as

authorized by the Act of February 13, 1929, the judgment or decree of this Court was served upon the respondent who specifically waived the issuance and service of a formal writ of mandamus and since such time, respondent, in making an award in this case which bears date of March 14, 1932, admitted that he had received the writ of mandamus and respondent further, in a letter to the President of the Senate, bearing date March 16, 1932, states that he "received the decree of the Court and proceeded to carry out its mandate".

II. In the response aforesaid, it is said, in substance, that the respondent ascertained as a matter of fact, that the amount of interest that had been paid or the obligations incurred to March 2, 1919, was $44,451.45. While this statement, in substance referred to herein, is in form true, it carries with it the erroneous implication that respondent had found as a matter of fact, that no interest was due beyond that which had been paid or obligations had accrued up to March 2, 1919.

60 III. In referring to the payment of $44,451.45, the answer aforesaid says:

"The respondent says that through his action as aforesaid, he complied fully in all respects with the judgment of the court in this case, and that nothing now remains to be done on his part in obedience to the said judgment."

This statement is traversed insofar as it makes or implies a statement of facts. It is not true that "nothing now remains to be done" in obedience to the judgment of this Court. The partial allowance made was made without prejudice and made for the amount stated only until the respondent should be advised as to the law, it being solely a question of law as to whether or not interest should continue after March 2, 1919.

IV. In said answer it is alleged:

"The respondent says that he thereupon determined, as a matter of fact, that it would not be in accordance with justice and equity to award or pay interest upon the relator's interest-bearing obligations, except to the extent of $44,451.45, for the reason, among others, that the principal amount of such indebtedness still outstanding had been

indirectly included in awards previously paid to the relator, as aforesaid."

Such allegation is traversed and the same is untrue in that respondent did not, as a matter of fact, so limit the payments as stated in the quotation above, but that such limit was solely made because of the construction of the law made by respondent in that respect.

V. The allegation of the respondent in paragraph 3 of his response is traversed and the same is untrue for this is not a proceeding in the nature of a bill of review but is solely a proceeding for the purpose of enforcing the judgment of this Court.

61 VI. The statement of respondent that the War Minerals Relief Act "apparently limits compensable interest to interest paid prior to March 2, 1919 and to unpaid interest accrued to that date", while probably intended as a contention of law, if alleged as a fact is, it is respectfully submitted, untrue.

VII. The statement of respondent that he has "complied with the requirement of the judgment of this court, as he has awarded and paid to the relator the full amount of all interest paid by it prior to March 2, 1919, as well as the amount of all unpaid interest accrued to that date; totaling $44,451.45" is traversed and the same is untrue in that the full amount of interest required to be paid relator by the judgment of this Court, and by the Act of March 2, 1919 is not limited as therein stated.

VIII. Relator says that it is not true as alleged by respondent that he "has fully complied with the requirements of the judgment of this court as entered in accordance with the mandate of the Supreme Court of the United States" and relator traverses that allegation.

IX. The statement of respondent that "in compliance with the requirement aforesaid, he has determined, as a matter of fact, that it would not be just and equitable to award the relator any interest computed beyond March 2, 1919, as a loss sustained under the terms of the War Minerals act" is untrue and is here traversed because the respondent has not, as a "matter of fact", decided as therein stated, but has denied under what it is submitted is an erroneous construction of the law, payments of interest for

obligations incurred in accordance with the Act of
62 March 2, 1919 and which obligations continued after that date.

X. The allegation that respondent "reached this conclusion by reason of the fact that the awards of $693,313.79 heretofore paid to the respondent, made it possible for the respondent to discharge its interest-bearing obligations in full and in that way to stop the running of interest, and also because of the reasons stated below", is traversed and it is not true in fact, nor is it true that the respondent concluded as a fact, that interest was stopped as stated in the foregoing quotation. In this connection, relator concedes that as a matter of discretion respondent might determine that some of the expenses paid by relator and set up in his questionnaire, were not, as a matter of law, demanded but respondent contends that equitably and justly they must be considered and that as a matter of law, relator is entitled to receive the full amount of his interest paid and for which it was obligated to pay regardless of any shut-off at any date short of the full liquidation of the obligations. The true amount due respondent if such expenses are disregarded as of December 31, 1931, is $494,042.38. If such expenses are included, then such amount due is $568,727.88. In either case further interest should be added to date of final payment to relator. Exhibit A attached hereto gives the amounts and the state of relator's obligations.

XI. The claim of respondent that in justice and equity it was necessary for him to fix a limit of time beyond which the payment of interest would cease to be just and equitable is hereby traversed and the same is an erroneous conclusion of law and is a question of law settled by
63 judgment of this Court in favor of relator.

XII. The statement of respondent that "justice and equity required that the limit so fixed (March 2, 1919) should be definite" is an erroneous statement of law and is here traversed.

XIII. In said response it is stated:

"Accordingly, in the discharge of the duty imposed upon him by the act of March 2, 1919, and in the exercise of the discretion vested in him by that act, the respondent determined, as a matter of fact, and he now declares that to

award and pay interest computed beyond March 2, 1919, to any War Minerals claimant, would not be just and equitable."

Relator says that such statement is not true; that the Secretary, respondent herein, did not exercise any discretion but that he specifically and definitely referred the legal issue to counsel and that as a matter of law, under undisputed facts respondent erred in not paying the full interest obligations which had been incurred by relator under the specified conditions of the Act of March 2, 1919.

XIV. The claim of respondent that exercising what he calls "the sound discretion of the respondent", he determined that the amount due relator was $44,451.45, is untrue for that respondent did not exercise discretion in this matter but construed the law and allowed that amount on account and without prejudice to a future determination as to what the law required. Nor is it true that respondent has any discretion to refuse to pay in full the obligations admittedly incurred and lost.

XV. Exhibit B attached to the response herein, is untrue and is traversed, the truth being that said
64 exhibit which contains the opinion of the Attorney General, shows that the Attorney General was misinformed as to the facts and the truth being further that on the 12th day of April, 1932, the Honorable The Attorney General of the United States, corrected his erroneous statements of fact in said Exhibit B and gave a correct statement of the facts and it was error of respondent not to set up the correction by copying as an exhibit to his answer such letter from the Attorney General. To show the true facts there is attached hereto, marked "Exhibit B", a letter from the Assistant Attorney General, Honorable Seth W. Richardson, enclosing (also copied in the exhibit) copy of the letter of the Attorney General correcting his erroneous statement in his letter of April 2, 1932.

Wherefore relator prays that this, his traverse, be considered, the facts inquired into and that it have relief as prayed in its original petition to enforce the decree herein and that if the respondent fails to comply with the judgment of this Court of December 15, 1931 within a short day to be

named, that he be punished for his contempt of such judgment.

EDGAR WATKINS,
MARION SMITH,
Attorneys for Relator.

WATKINS, ASBILL & WATKINS,
Of Counsel.

EXHIBIT "A".

Disregarding all expenses incurred by claimant in prosecuting its claim and applying all payments received from the United States Government toward the liquidation of interest and principal of its interest bearing obligations incurred during the stimulation period without payment of
65 legal fees or expenses or any other deductions whatsoever, the amount due claimant for interest paid and interest due remaining unpaid as at December 31, 1931, was $494,042.38.

Treating, as we believe in equity and justice they should be treated, the expenses incurred by claimant in prosecuting its claim as amounts which claimant was obligated to pay out of awards received ahead of payments on interest bearing indebtedness, the amount due the claimant under the War Minerals Relief Act, as amended, for interest paid and due remaining unpaid under obligations to pay, the said obligations being incurred within the stimulated period, was, as at December 31, 1931, $568,727.88.

Whichever of the above two plans is adopted, interest should be added to the date of final payment less the credit of $44,451.45 paid April 15, 1932.

To show in detail how the lesser amount of $494,042.38 is arrived at, the calculations follow:

Chestatee Pyrites & Chemical Corporation.

Summary of Expenses Deducted.

First award expenses:		
Lawyers' fees, expenses, expert witnesses, Traveling Expenses, etc..	22,517.00	
Geo. L. Pratt—on a/c past due salary.....	8,377.14	
	30,894.14	
Less Balance due General Creditors	29,511.84	
		1,382.30

Second award expenses:		
Lawyers fees	85,165.53	
Travel. & Miscellaneous expenses, Expert witnesses, etc	16,901.07	
		102,066.60
		103,448.90
Interest on above:		
Int. on 1,382.30 10-25-19 to 10-5-22 = 2 yrs.—344 days @ 6%		244.04
66		
Int. on 103,448.90 10-6-22 to 9-15-23 = 345 days @ 6%		5,866.73
Int. on 103,448.90 9-16-23 to 12-31-31 = 8 yrs.—107 days @ 8%		68,574.73
Int. on above		$74,685.50
Interest Losses Claimed as of Dec. 31, 1931 as per questionnaire claim Jan. 2, 1932		$568,727.88
Less Interest on 103,448.90 applied to other than interest bearing liabilities (Lawyers fees & expenses)		74,685.50
Interest Losses Dec. 31, 1931 if all recovery had been applied to retirement of interest bearing Liabilities		$494,042.38

Details of the Financial Condition of Chestatee Pyrites & Chemical Corporation as at Date First Award, 10-25-19, are:

Ashcraft-Wilkinson Co. Funded Debt	695,000.00
Other contract interest bearing liabilities	165,087.96
Total Contract Interest Bearing Liabilities as at 10-25-19 (date of First Award)	860,087.96
General Creditors (Past due accounts in suit and otherwise outstanding) bearing interest at 7% per annum under the statute of Georgia, Code Sec. 3426	57,058.91
	917,146.87

Lawyers' fees and Expenses, Expert Witnesses, Trav. Expenses, etc., in connection with prosecution of claim before First Commission.	22,517.00
George L. Pratt—On Account Past Due Salary..	8,377.14
Total Indebtedness as at date of First Award	948,041.01
Deduct Ashcraft-Wilkinson Co. funded Debt Not Yet Due	695,000.00
Indebtedness (other than funded debt) due and past due	253,041.01
First Award received 10-25-19	$223,529.17

Applied as follows:

Payment all interest bearing Liabilities other than funded debt	165,087.96
Lawyers' fees & Expenses, expert witnesses, travel. Exp., etc	22,517.00
Geo. L. Pratt—on a/c Past Due Salary	8,377.14
67	
To Miscl. General Creditors, including interest..	27,547.07
	223,529.17
Balance due General Creditors	29,511.84
	253,041.01

Details of the financial condition of Chestatee Pyrites & Chemical Corporation as at date second award, October 5, 1922, are:

Total indebtedness consisting of Funded Debt to Ashcraft-Wilkinson Co	695,000.00
Financing Commission allowed by U. S. Government in lieu of financing commission provided in financing contract	64,500.00
Unpaid balance of brokerage fee on ore sales	6,541.78
Accrued unpaid interest	99,729.87
	865,771.65
Second award received 10-5-22	469,784.62

Applied as follows:

Ashcraft-Wilkinson Co. Financing Commission (as fixed by the Secretary of the Interior)....	64,500.00
Ashcraft-Wilkinson Co. Brokerage fee.....	6,541.78
Accrued unpaid Interest.....	106,149.61
Ashcraft-Wilkinson Co. reduction of Principal of Funded Indebtedness.....	190,526.63
Lawyers Fees.....	85,165.53
Travel. & Miscellaneous Expenses Expert witnesses, etc.....	16,901.07
	469,784.62

68 STATE OF GEORGIA,
County of Fulton:

Personally appeared before the undersigned officer, George L. Pratt, an officer of the Chestatee Pyrites & Chemical Corporation, and as such authorized to make this affidavit, who being duly sworn, on oath says that he has read the foregoing traverse and that the statements therein are true except where stated on information and belief and where so stated he believes the same to be true.

GEORGE L. PRATT.

Subscribed and sworn to before me this 2" day of May, 1932.

FRANK E. CUNNINGHAM,
Clerk.

ALF G. BUHRMAN,
Asst. Clk.

69 *Memorandum.*

Filed June 7, 1932.

* * * * * * *

This is a petition to enforce a decree of this Court signed December 15, 1931. A rule to show cause was issued thereon; defendant has filed an answer, to which the relator filed a traverse. Upon those pleadings testimony was taken in open Court.

The real question is whether defendant as Secretary of the Interior has obeyed said order of December 15, 1931.

In my judgment this question should be answered in the affirmative.

It follows that the relator is not entitled to further relief.

One. The Secretary's answer shows a full compliance with the opinion of the Supreme Court.

The Supreme Court said:

"The amount of interest that at the time of the passage of the Relief Act March 2, 1919, had been paid when incurred for money borrowed and lost in producing and preparing to produce pyrites under specified conditions is to be taken into account in determining the amount of its net loss as of that date."

The Court continued:

"And the Secretary upon consideration of all the circumstances and with due regard to the provisions of the sections amended must be satisfied and determine as a matter of fact that an allowance on account of such interest is just and equitable and that the loss is one for which the relator in justice and equity is entitled to be reimbursed from the appropriation" (284 U. S. 238).

In response to the rule issued to show cause why the prayers of the petition to enforce the decree should
70 not be granted defendant states:

"After a careful and complete review of relator's War Minerals claim, and of the voluminous records of the War Minerals Relief Commission with respect thereto, including all of the evidence submitted with respect to the claim, as well as the reports of examiners and auditors, and the various statements, arguments and briefs submitted by the relator, respondent ascertained as a matter of fact that the amount of interest that at the time of the passage of the act of Congress of March 2, 1919, had been paid or the obligations incurred by the relator for money borrowed and lost in producing and preparing to produce pyrites at the request or demand of the Department of the Interior to supply the urgent needs of the Nation in the prosecution of the World War, and for which in justice and equity the relator was entitled to receive reimbursement from the ap-

propriation made by Congress for the payment of such losses, was $44,451.45.

"The respondent thereupon proceeded with the final adjustment of the relator's claim filed pursuant to the act of Congress of March 2, 1919, in accordance with the facts determined, as aforesaid, and as a result of such adjustment, awarded the relator the further and additional sum of $44,451.45, which thereafter was paid to and was actually received and accepted by the relator.

"The respondent says that through his action as aforesaid, he complied fully in all respects with the judgment of the court in this case, and that nothing now remains to be done on his part in obedience to the said judgment."

This statement shows a compliance with both the letter and the spirit of the decision of the Supreme Court.

At the hearing there was a suggestion by plaintiff that defendant had not in fact made the determination as stated in the answer.

This is disposed of by *West v. Hitchcock*, 205 U. S. 84. There the Court said:

"Furthermore, as his decision is not a matter of any particular form, his answer saying that he has decided the case is enough; for even if he had not decided it before, such an answer would announce a decision sufficiently by itself."

71 I do not understand that in his oral testimony Mr. Edwards, Assistant Secretary of the Interior, in any way modified or intended to modify the above quoted averments of the answer.

Two. In my judgment the Supreme Court has decided that the cut-off date for interest is March 2, 1919.

The amount of interest is to be taken into account "in determining the amount of its net loss as of that date"—that is, March 2, 1919.

It was the interest which had been actually paid before March 2, 1919, and the interest agreed to be paid up to that date though not yet paid.

The losses are to be ascertained as of March 2, 1919. This means the exact losses as of that date. No one can then ascertain what interest will be lost thereafter. That is speculative.

It appears from the facts hereafter discussed that in all probability plaintiff never will be able to pay its entire interest-bearing debt. Its contention in effect is that it is entitled to a permanent annual payment on its unpaid debt.

Three. If this question has not been decided by the Appellate Courts but is still open for determination I agree with the opinion of the Solicitor of the Department of the Interior that a definite cut-off date was fixed for payment of interest and that this cut-off date does not extend beyond March 2, 1919.

1. The mining property might have further decreased in value after March 2, 1919; it is conceded that such losses are not recoverable. Operating losses to March 2,
72 1919, are being claimed but no one asserts the right to reimbursement on this account after that date.

It is difficult to see why losses growing out of payment of interest after March 2, 1919, should be in a different position. The argument is that such interest should be paid because the obligation to pay interest was incurred prior to the cut-off date. But the same thing is true of the other losses mentioned.

It seems to me that Congress intended that the losses would be ascertained as of the cut-off date; and that the payments would then be made in reimbursement of all losses which the Secretary of the Interior should find were suffered. Congress did not undertake to pay all of the existing debts of the claimant.

2. Some claimants had invested their own money in the property, while others had borrowed money. It is discriminatory to pay interest on the borrowed money and not on claimant's own investment.

3. The relator contends that it is entitled to receive the full amount of its interest paid and for which it was obligated to pay, regardless of any cut-off date "short of the full liquidation of the obligations" (Traverse, par. X).

I understand this to mean until the full liquidation by the relator of its interest-bearing debts.

I am frank to say that this contention seems logical if March 2, 1919, is not the cut-off date.

Plaintiff's original claim was about $914,000, included in which was a claim for $695,000 borrowed money. The
73 loan bore interest at 6%, was due in five years, and was then renewed at 8%.

By 1922 claimant was paid in two awards a total of $693,000. In Law action No. 76,364, just affirmed by the Court of Appeals, this Court has directed payment to the relator of approximately $105,000 more. The total aggregates in round figures $800,000. The remainder of relator's claim, or about $114,000, has been definitely and finally disallowed.

It might be assumed, reasonably, that Congress intended the payment of $693,000 to be applied to the principal, thus leaving in dispute since 1922 only the balance of $105,000.

However, relator applied about $223,000 to collection expenses and paid only $190,000 of said $695,000 interest-bearing debt, leaving unpaid about $500,000.

Relator now claims interest to December 31, 1931, of $568,000. In the alternative—depending upon whether the money paid by relator for collection expenses should have been applied in payment of its losses—the relator claims interest of only $494,000 up to December 31 last.

Of course Congress did not agree to reimburse claimants their collection expenses. Therefore I take relator's claim for interest to December 31 to be $494,000. There is a further claim for interest of over $100 a day since the first of the year, or $16,000 to date—a total of $510,000.

Relator still owes unpaid interest of $357,000 (Questionnaire, Ans. 24).

The account now stands about as follows—interest to be collected from the United States, $510,000; additional
74 principal collected from the United States, $105,000; or $610,000.

The other side of the account would show unpaid interest of $357,000, and unpaid principal of $500,000.

This would show an unpaid balance of about $250,000. It is reasonably apparent from the record that the relator is insolvent, and that it can never hope to pay this $250,000. Since 1923 the $500,000 debt has been bearing interest at the rate of 8%.

Relator's contention is that it is entitled to collect interest from the United States until it has repaid in full its interest-bearing obligations incurred prior to the cut-off date.

It is therefore apparent that in addition to its present claim of $510,000 of interest it also asserts the right to collect on its unpaid balance of $250,000 the sum of $20,000 each year in perpetuity.

In my judgment Congress did not intend any such result. The cut-off date contended for by respondent can not be the correct one.

4. If this case involved a question of contract obligation between private parties the cut-off date might logically be the date of the payment of the principal loss suffered by relator.

Payments were made by the United States in 1919 and 1922. On this theory each payment should have been applied in full to the reduction of the interest-bearing principal. It might be proper to allow interest on the whole sum of $800,000, to the first payment of $223,000 in
75 1919, interest on $577,000 to the next payment in 1922, and interest on $105,000 to the date of its payment.

The answer to this theory is that Congress did not authorize payment of interest on the losses suffered by claimants. The payment is a gratuity, and payment of interest is authorized only as part of the losses suffered to the cut-off date.

The consideration which I have given to all possible cut-off dates leads my mind back to the conclusion that March 2, 1919, is the cut-off date, and that Congress did not intend to pay among the losses suffered interest beyond that date.

June 7, 1932.

JESSE C. ADKINS,
Justice.

76 *Order.*

Filed June 16, 1932.

* * * * * * *

This cause having been heard upon the petition filed by the relator, Chestatee Pyrites & Chemical Corporation, for an order enforcing the judgment of this court of December 15, 1931, in the manner prayed by the relator, and upon the rule to show cause issued pursuant to said petition, and the answer thereto of the respondent, Ray Lyman Wilbur, as Secretary of the Interior, and the relator's traverse of the respondent's answer; and after due consideration of the aforesaid pleadings, and of the testimony submitted by the

relator, and the arguments of counsel for the respective parties, it is this 16th day of June, 1932;

Adjudged and ordered that the relator's said petition be, and the same hereby is denied.

JESSE C. ADKINS,
Justice.

From the foregoing order Chestatee Pyrites & Chemical Corporation, in open court and at the time of signing the same, notes an appeal to the Court of Appeals, and the same hereby is allowed. The undertaking for costs on appeal is fixed in the amount of $100, with leave to the appellant to deposit the sum of $50 with the Clerk of this court in lieu thereof.

JESSE C. ADKINS,
Justice.

O. K. as to form.
O. H. GRAVES,
Atty. for Respondent.
EDGAR WATKINS,
For Chestatee Pyrites & Chemical Corporation.

Memoranda.

June 16, 1932.—$50 deposited by Plaintiff in lieu of bond on appeal.

Bill of Exceptions filed, submitted and signed.

77 *Assignment of Errors.*

Filed June 16, 1932.

* * * * * * *

The appellant, Chestatee Pyrites & Chemical Corporation, assigns the following errors in the ruling of the Court. The Court erred:

1. In holding and adjudging contrary to the undisputed evidence that respondent, the Secretary of the Interior, had ascertained as a fact or as a matter of justice and equity that the interest due appellant stopped as of March 2, 1919.

2. In holding and adjudging that the response to the petition to enforce the judgment of December 15, 1931 must be

accepted as true notwithstanding that the claim therein that respondent had found as a fact that interest stopped on March 2, 1919 was contrary to the undisputed evidence.

3. In holding that allegations of the response must be accepted as final notwithstanding undisputed evidence contradicted such answer.

4. In holding, as a matter of law, that the obligations to pay interest on borrowed money paid and subsequently lost by appellant, ended on the second day of March, 1919.

5. In holding, as a matter of law, that because of the decision of the Supreme Court of the United States in this cause on prior appeal, that interest on money borrowed by appellant and subsequently lost, could not be paid beyond the date of March 2, 1919.

78 6. In refusing specifically to direct the Secretary of the Interior to conform to the decree of the Supreme Court of the District of Columbia entered herein on the 15th day of December, 1931, by considering interest on obligations incurred prior to November 11, 1918 beyond March 2, 1919, the undisputed evidence showing and the Secretary finding that obligations to pay such interest beyond March 2, 1919 existed.

7. In denying appellant relief prayed for herein in its petition to enforce the decree of December 15, 1931.

Wherefore appellant prays that the judgment of this Court entered herein on the 16 day of June, 1932, be reversed and that relief be granted appellant as prayed in its petition to enforce the decree of December 15, 1931.

EDGAR WATKINS,
MARION SMITH,
Counsel for Appellant, Chestatee Pyrites & Chemical Corporation.

Designation of Record.

Filed June 16, 1932.

* * * * * * *

The Clerk will please prepare the transcript of record on the appeal of Chestatee Pyrites & Chemical Corporation, including therein the following parts of the record:

1. Petition for review and mandamus.

2. The petition for an order substituting Ray Lyman Wilbur as respondent.

3. The original response to the rule to show cause, with the exhibits thereto attached.

4. Stipulation of the parties hereto, dated September 2, 1929.

79 5. Order of the court on said stipulation, dated September 24, 1929.

6. Respondent's answer to the petition for mandamus, omitting the exhibits copied with paragraph 3, above.

7. The decree of December 15, 1931.

8. The petition to enforce the decree filed by Chestatee Pyrites & Chemical Corporation.

9. Respondent's answer to the rule to show cause in answer to the petition to enforce the decree, together with the exhibits thereto.

10. Petitioner-appellant's traverse of said response, omitting Exhibit B thereto.

11. Final judgment denying the petition to enforce the decree.

12. The bill of exceptions showing the evidence as approved by the court.

13. Memorandum as to approval and filing of bond on appeal of Chestatee Pyrites & Chemical Corporation.

14. Assignment of errors on appeal of Chestatee Pyrites & Chemical Corporation.

15. This designation of transcript of record and the acceptance of service thereon.

EDGAR WATKINS,
MARION SMITH,
Counsel for Appellant, Chestatee Pyrites & Chemical Corporation.

Acknowledgment of Service.

Receipt is hereby acknowledged of a copy of appellant's assignment of errors, Bill of Exceptions and of its designation of record on appeal. This June 16, 1932.

O. H. GRAVES,
Solicitor for Ray Lyman Wilbur, Secretary of the Interior.

80 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 79, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 76361 at Law, wherein The United States of America, ex rel. Chestatee Pyrites & Chemical Corporation is Plaintiff and Ray Lyman Wilbur, Secretary of the Interior, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 2nd day of August, 1932.

[Seal Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,
Clerk.

81 In the Supreme Court of the District of Columbia.

At Law.

No. 76361.

UNITED STATES OF AMERICA ex Rel. CHESTATEE PYRITES & CHEMICAL CORPORATION

vs.

RAY LYMAN WILBUR, Secretary of the Interior.

Bill of Exceptions.

Be it remembered that at the trial of this case before Mr. Justice Adkins, on the petition to enforce the decree of December 15, 1931, before the court without a jury, which trial began on May 4, 1932, and thereafter was further proceeded with.

John H. Edwards, being first duly sworn, testified on behalf of relator, Chestatee Pyrites & Chemical Corporation, on direct examination, in substance as follows:

"I am Assistant Secretary of the Interior. After the War Minerals Commissioner passed upon this claim and

after it passed through the Solicitor's office, it came to my desk. I read the decision prepared for the Secretary's signature by the War Mineral's Commissioner, approved it and passed it on to the Secretary. That opinion is dated March 14, 1932 by which the claimants received
82 something like Forty-four thousand or Forty-five thousand dollars interest. In that opinion, I did not consider any interest beyond March 2, 1919. At the time that opinion was rendered, there was before the Attorney General the legal question of whether or not interest could be awarded after March 2, 1919. Prior thereto the question of interest had been submitted to the Solicitor and the Solicitor at that time had decided that interest, under the law, must end March 2, 1919, and the calculation in the award referred to above had been made up to that date. Immediately thereafter the question was submitted to the Attorney General as to whether or not, under the law, interest was allowable after March 2, 1919. At the time the award of March 14, 1932 was made, no answer had been received from the Attorney General. The award was made without prejudice at the request of the parties because of their immediate needs and made under the opinion of the Solicitor that the law required the ending of interest on March 2, 1919. The opinion of the Solicitor had held that interest stopped as of that date under the law and that opinion was accepted as a basis for the calculation of interest and at that time, we accepted as law the Solicitor's opinion.

"In the course of the opinion, it was said:

" 'George L. Pratt of the claimant company, and Mr. Lee Ashcraft, of Ashcraft-Wilkinson, the latter being the chief creditor of the claimant company, made request that the Secretary award at once, without prejudice, the amount of interest found to be reimbursable to March 2, 1919. They represented that such an award would be of very great assistance in meeting their pressing financial obligations; and they further represented that the award would be applied on the principal and, therefore, would be a stop on interest to the extent of the award in case it should be held finally that interest was payable to the date of settlement of the claim.'

"By this statement I meant that if the Attorney General held, as a matter of law, that the interest did not end
83 on March 2, 1919, the Interior Department would proceed, calculate the interest from March 2, 1919 on to whatever date the Attorney General, in his opinion, fixed as the ending date and would make an additional award if that was the law. We gave consideration to interest after March 2, but because we thought it the law that interest terminated March 2, 1919, we stopped interest as of that date but we would not have stopped interest after that date except we were acting on the law as at that time construed. We have never had the interest accurately calculated up to the present time and beyond March 2, 1919. I have heard various estimates made. I think I have heard two or three say that the interest ran perhaps a couple of hundred thousand dollars but I do not know anybody who has made an exact calculation.

"I understand that if the law permits and directs the calculation of interest after March 2, 1919, that calculation will be made and that interest will be allowed. It has been decided that interest ends March 2, 1919 and if we are in error in our law, we will at once make the calculation in accordance with the law."

Relator then offered in evidence, and the same was received without objection, the report of John H. Edwards, Assistant Secretary, dated March 14, 1932, in which he certified to the General Accounting Office a payment of $44,451.45 to the Chestatee Pyrites & Chemical Corporation and in an opinion attached to said report, the Secretary stated the language quoted above from the testimony of John H. Edwards and said:

"As to interest, they (auditors for the Government) have traced payments to Asheraft-Wilkinson and to banks, payments on notes for machinery and on notes for
84 accounts payable. Excluding interest on $50,000.00 borrowed prior to stimulation, they find that there is due for reimbursement to this claimant company from the date of stimulation up to and including March 2, 1919, the sum of $44,431.45.

"In the above claim, under the War Minerals Relief Act, Section 5 of the act of March 2, 1919 (40 Stat. 1274), as

amended, upon due consideration of the record, the admissible net loss on interest to March 2, 1919, is found to be $44,451.45.

"An award is made in this claim in the sum of $44,431.45."

Chestatee Pyrites & Chemical Corporation then offered in evidence a copy of a letter produced by the respondent addressed to the President of the Senate, dated March 16, 1932. This letter was received in evidence and the material part of which is:

"On December 15, 1931, the Secretary received the decree of the court and proceeded to carry out its mandate. Immediately there arose the legal question whether interest was to stop at March 2, 1919, or be paid to the date of settlement, and the solicitor and the Attorney General were requested to give opinions on the question. While waiting for the opinion of the Attorney General (not yet received) George L. Pratt, of the Chestatee Co., and Lee Asheraft, the chief creditor, requested that the interest be computed to March 2, 1919, and paid, without prejudice to either side, and on March 14 the Secretary ordered this to be done, with the result that, on March 16, 1932, there was certified for payment a third award to this company amounting to $44,451.45.

"The items contained in the second suit will be
85 adjusted promptly upon termination of the litigation.

"Of the amount of $909,925.69 first claimed, the department has paid $737,765.24, and the claimant now claims that approximately $622,000 is still due.

"It will be seen that the Chestatee claim has had preferred consideration in the department since last December, as it was a test case for the payment of losses for interest on which the Supreme Court made its decision. It has been my policy in all these war minerals claims to expedite action. The Chestatee claimants have been before the department almost continuously since January presenting their cause, and everything has been done to advance final settlement. However, there is now no question for action in this claim before the Department of the Interior. The two pending items, payment of interest from

March 2, 1919, to December 31, 1931, and the question of appealing on the decree of the Supreme Court of the District of Columbia for alleged losses of approximately $100,000 being now with the Attorney General for decision."

Chestatee Pyrites & Chemical Corporation then presented the testimony of Josephus C. Trimble, testifying by affidavit, by consent of parties, who testified that he, as associate counsel, presented the decree of the Supreme Court of the District of Columbia in the case of the United States of America ex rel Chestatee Pyrites & Chemical Corporation, vs. Ray Lyman Wilbur, Secretary of the Interior, at law No. 76361, to Mr. O. H. Graves, Assistant Solicitor of the Department of the Interior; that he
86 inquired of Mr. Graves if it was necessary to furnish a formal writ of mandamus; that Mr. Graves replied that the Department would act upon a certified copy of the decree, and that it was unnecessary for the plaintiff to go to the expense of securing and serving a formal writ of mandamus in said case.

Chestatee Pyrites and Chemical Corporation then offered in evidence a memorandum for the Secretary, dated March 9, 1932 signed, Edwards, Assistant Secretary, and produced by respondent under notice, in which memorandum it is stated:

"I suggest the following procedure:

"1. That the Department before taking any action await the rendition by the Attorney General of an opinion on the interest question submitted to him by this Department. This opinion is due almost any day now. The Solicitor of this Department rendered an opinion that interest must end March 2, 1919. The claimants (notably the Chestatee claimant) allege that interest must be calculated to the time of the payment of the principal by the claimant, and this means in the Chestatee case the calculation of interest up to the present because the principal on which the interest must be calculated is up to the moment undischarged by payment.

"2. That upon rendition of the opinion by the Attorney General on the interest question that interest be calculated under the rule of his opinion."

87 The foregoing is the substance of all the testimony bearing upon the exceptions herein observed in behalf of defendant.

After the closing of the testimony above given in substance, argument was had and briefs filed and the court took the matter under advisement. Later, on the 7th of June, 1932, a memorandum was filed by the court as follows:

"This is a petition to enforce a decree of this Court signed December 15, 1931. A rule to show cause was issued thereon; defendant has filed an answer, to which the relator filed a traverse. Upon those pleadings testimony was taken in open court.

"The real question is whether defendant as Secretary of the Interior has obeyed said order of December 15, 1931.

"In my judgment this question should be answered in the affirmative.

"It follows that the relator is not entitled to further relief.

"One. The Secretary's answer shows a full compliance with the opinion of the Supreme Court.

"The Supreme Court said:

" 'The amount of interest that at the time of the passage of the Relief Act March 2, 1919 had been paid when incurred for money borrowed and lost in producing and preparing to produce pyrites under specified conditions is to be taken into account in determining the amount of its net loss as of that date.'

"The Court continued:

" 'And the Secretary upon consideration of all the circumstances and with due regard to the provisions of the sections amended must be satisfied and determine as a matter of fact that an allowance on account of such
88 interest is just and equitable and that the loss is one for which the relator in justice and equity is entitled to be reimbursed from the appropriation' (284 U. S. 238).

"In response to the rule issued to show cause why the prayers of the petition to enforce the decree should not be granted defendant states:

" 'After a careful and complete review of relator's War Minerals claim, and of the voluminous records of the War

Minerals Relief Commission with respect thereto, including all of the evidence submitted with respect to the claim, as well as the reports of examiners and auditors, and the various statements, arguments and briefs submitted by the relator, respondent ascertained as a matter of fact that the amount of interest that at the time of the passage of the act of Congress of March 2, 1919 had been paid or the obligations incurred by the relator for money borrowed and lost in producing and preparing to produce pyrites at the request or demand of the Department of the Interior to supply the urgent needs of the Nation in the prosecution of the World War, and for which in justice and equity the relator was entitled to receive reimbursement from the appropriation made by Congress for the payment of such losses, was $44,451.45.

" 'The respondent thereupon proceeded with the final adjustment of the relator's claim filed pursuant to the act of Congress of March 2, 1919, in accordance with the facts determined, as aforesaid, and as a result of such adjustment, awarded the relator, the further and additional sum of $44,451.45, which thereafter was paid to and was actually received and accepted by the relator.

" 'The respondent says that through his action as aforesaid, he complied fully in all respects with the judgment of the court in this case, and that nothing now remains to be done on his part in obedience to the said judgment.'

"This statement shows a compliance with both the letter and the spirit of the decision of the Supreme Court.

"At the hearing there was a suggestion by plaintiff that defendant had not in fact made the determination as stated in the answer.

"This is disposed of by *West v. Hitchcock*, 205 U. S. 84. There the Court said:

89 " 'Furthermore, as his decision is not a matter of any particular form, his answer saying that he has decided the case is enough; for even if he had not decided it before, such an answer would announce a decision sufficiently by itself.'

"I do not understand that in his oral testimony Mr. Edwards, Assistant Secretary of the Interior, in any way modified or intended to modify the above quoted averments of the answer.

"*Two. In my judgment the Supreme Court has decided that the cut-off date for interest is March* 2, 1919.

"The amount of interest is to be taken into account 'in determining the amount of its net loss as of that date'—that is, March 2, 1919.

"It was the interest which had been actually paid before March 2, 1919 and the interest agreed to be paid up to that date though not yet paid.

"The losses are to be ascertained as of March 2, 1919. This means the exact losses as of that date. No one can then ascertain what interest will be lost thereafter. That is speculative.

"It appears from the facts hereafter discussed that in all probability plaintiff never will be able to pay its entire interest-bearing debt. Its contention in effect is that it is entitled to a permanent annual payment on its unpaid debt.

"*Three.* If this question has not been decided by the Appellate Courts but is still open for determination I agree with the opinion of the Solicitor of the Department of the Interior that a definite cut-off date was fixed for payment of interest and that this cut-off date does not extend beyond March 2, 1919.

90 "1. The mining property might have further decreased in value after March 2, 1919; it is conceded that such losses are not recoverable. Operating losses to March 2, 1919 are being claimed but no one asserts the right to reimbursement on this account after that date.

"It is difficult to see why losses growing out of payment of interest after March 2, 1919 should be in a different position. The argument is that such interest should be paid because the obligation to pay interest was incurred prior to the cut-off date. But the same thing is true of the other losses mentioned.

"It seems to me that Congress intended that the losses would be ascertained as of the cut-off date; and that the payments would then be made in reimbursement of all losses which the Secretary of the Interior should find were suffered. Congress did not undertake to pay all of the existing debts of the claimant.

"2. Some claimants had invested their own money in the property, while others had borrowed money. It is dis-

criminatory to pay interest on the borrowed money and not on claimant's own investment.

"3. The relator contends that it is entitled to receive the full amount of its interest paid and for which it was obligated to pay, regardless of any cut-off date 'short of the full liquidation of the obligations' (Traverse, par. X).

"I understand this to mean until the full liquidation by the relator of its interest-bearing debts.

"I am frank to say that this contention seems logical if March 2, 1919 is not the cut-off date.

"Plaintiff's original claim was about $914,000, included in which was a claim for $695,000 borrowed money. The loan bore interest at 6%, was due in five years, and was then renewed at 8%.

91 "By 1922 claimant was paid in two awards a total of $693,000. In Law action No. 76,364, just affirmed by the Court of Appeals, this Court has directed payment to the relator of approximately $105,000 more. The total aggregates in round figures $800,000. The remainder of relator's claim, or about $114,000, has been definitely and finally disallowed.

"It might be assumed, reasonably, that Congress intended the payment of $693,000 to be applied to the principal, thus leaving in dispute since 1922 only the balance of $105,000.

"However, relator applied about $223,000 to collection expenses and paid only $190,000 of said $695,000 interest-bearing debt, leaving unpaid about $500,000.

"Relator now claims interest to December 31, 1931 of $568,000. In the alternative—depending upon whether the money paid by relator for collection expenses should have been applied in payment of its losses—the relator claims interest of only $494,000 up to December 31 last.

"Of course Congress did not agree to reimburse claimants their collection expenses. Therefore I take relator's claim for interest to December 31 to be $494,000. There is a further claim for interest of over $100 a day since the first of the year, or $16,000 to date—a total of $510,000.

"Relator still owes unpaid interest of $367,000 (Questionnaire, Ans. 24).

"The account now stands about as follows: Interest to be collected from the United States, $510,000; additional prin-

cipal collected from the United States, $105,000; or $610,000.

"The other side of the account would show unpaid interest of $357,000, and unpaid principal of $500,000.

92 "This would show an unpaid balance of about $250,000. It is reasonably apparent from the record that the relator is insolvent, and that it can never hope to pay this $250,000. Since 1923 the $500,000 debt has been bearing interest at the rate of 8%.

"Relator's contention is that it is entitled to collect interest from the United States until it had repaid in full its interest-bearing obligations incurred prior to the cut-off date.

"It is therefore apparent that in addition to its present claim of $510,000 of interest it also asserts the right to collect on its unpaid balance of $250,000 the sum of $20,000 each year in perpetuity.

"In my judgment Congress did not intend any such result. The cut-off date contended for by respondent can not be the correct one.

"4. If this case involved a question of contract obligation between private parties the cut-off date might logically be the date of the payment of the principal loss suffered by relator.

"Payments were made by the United States in 1919 and 1922. On this theory each payment should have been applied in full to the reduction of the interest-bearing principal. It might be proper to allow interest on the whole sum of $800,000, to the first payment of $223,000 in 1919, interest on $577,000 to the next payment in 1922, and interest on $105,000 to the date of its payment.

"The answer to this theory is that Congress did not authorize payment of interest on the losses suffered by claimants. The payment is a gratuity, and payment of interest is authorized only as part of the losses suffered to the cut-off date.

93 "The consideration which I have given to all possible cut-off dates leads my mind back to the conclusion that March 2, 1919 is the cut-off date, and that Congress did not intend to pay among the losses suffered interest beyond that date.

"June 7, 1932.

"JESSE C. ADKINS,
Justice."

To the holding of the court that "The Secretary's answer shows a full compliance with the opinion of the Supreme Court", because the same is contrary to the undisputed facts and wholly without evidence to support it; and to the holding of the court that "In my judgment the Supreme Court has decided that the cut-off date for interest is March 2, 1919", because the same is contrary to the statute passed March 2, 1919 and amendments thereto and contrary to the decision of the Supreme Court on the former appeal of this case; and to the findings and conclusions of the court in the above quoted memorandum, because the same are contrary to the law and the undisputed evidence, relator, Chestatee Pyrites & Chemical Corporation excepts and the exception is allowed and because the matters and things hereinbefore recited are not matters of record, in order to make the same a part of the record herein, which is hereby ordered, so that the relator, Chestatee Pyrites & Chemical Corporation, may have its case reviewed on appeal, said relator, by its attorneys, moves the court to sign and seal this, its bill of exceptions, to have the same force and effect as if each and every one of said exceptions had been separately signed and sealed, which motion is granted by the court; and thereupon, the relator tenders this, its bill of exceptions and requests the court to sign and seal the same, which is
94 accordingly done, now for then, this 16th day of June, 1932.

JESSE C. ADKINS,
Justice.

Approved:
MARVIN SMITH,
EDGAR WATKINS,
Attorneys for Chestatee
Pyrites & Chemical Corporation.

Service of a copy hereof acknowledged and time of filing waived, June 16/32.

O. H. GRAVES,
Of Counsel for Ray Lyman Wilbur,
Secretary of the Interior.

95 [Endorsed:] Supreme Court of the District of Columbia. At Law. No. 76361. United States ex rel. Chestatee Pyrites & Chemical Corporation v. Ray Lyman

Wilbur, Secretary of the Interior. Bill of exceptions. Watkins, Asbill & Watkins, Attorneys-at-Law, Atlanta, Georgia. Court of Appeals, District of Columbia. Filed Aug. 3, 1932. Henry W. Hodges, Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 5760. United States of America ex rel. Chestatee Pyrites & Chemical Corporation, appellant, vs. Ray Lyman Wilbur, Secretary of the Interior. Court of Appeals, District of Columbia. Filed Aug. 3, 1932. Henry W. Hodges, Clerk.

94 Monday, October 31st, A. D. 1932

No. 5760

UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL Corporation, appellant

vs.

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR

The argument in the above-entitled cause was commenced by Mr. Edgar Watkins, attorney for the appellant, and was continued by Mr. O. H. Graves, attorney for the appellee, and was concluded by Mr. Marion Smith, attorney for the appellant.

95 Court of Appeals of the District of Columbia

No. 5760

UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL Corporation, appellant

v.

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

Argued October 31, 1932. Decided December 12, 1932

Edgar Watkins, and Marion Smith, Atlanta, Ga., for appellant.
O. H. Graves, of Washington, D. C., for appellee.

Before MARTIN, Chief Justice; ROBB, VAN ORSDEL, HITZ, and GRONER, Associate Justices.

VAN ORSDEL, Associate Justice: This case was brought in the Supreme Court of the District of Columbia under the act of February 13, 1929 (45 Stat. 1166), to obtain a review of certain questions of law decided by the Secretary of the Interior and involved in petitioner's original claim for losses sustained in producing or preparing to produce war minerals.

On March 5, 1919, relator company filed with the Secretary of the Interior a claim for losses occasioned through expenditures it had made for the production of pyrites under the conditions specified in section 5 of the act of March 2, 1919 (40 Stat. 1272). The claim included items of interest on money borrowed, expended in the

enterprise, and lost by the plaintiff. The Secretary held that the statute prohibited any award on account of interest and disallowed that part of the claim.

The question of the right to recover interest was presented to this court in the case of Work v. United States (54 App. D. C. 380; 298 Fed. 839), and was decided in favor of the relator. The judgment was reversed in the Supreme Court, Work v. United States (267 U. S. 185), on the ground that the statute clothed the Secretary of the Interior with full discretion to determine the rights involved, a discretion not reviewable by the courts.

This seems to have led to the passage of the act of February 13, 1929, amending the 1919 act, which provides as follows: "That any claimant who has heretofore filed with the Secretary of the Interior within the time and manner provided by existing law a claim
96 under said acts generally known as the war minerals acts (40 Stat. 1272, and its amendments) may within one year from the date of the passage and approval hereof petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said acts, but the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court."

Following the passage of the 1929 act, relator company brought a suit in the Supreme Court of the District for mandamus to compel the Secretary to take jurisdiction and allow its claim for interest. The court held that the Secretary had properly construed the statute and dismissed the petition. This court on appeal reversed the lower court (60 App. D. C. 62, 47 Fed. (2d) 424) holding that interest should be allowed. This holding was affirmed by the Supreme Court of the United States (284 U. S. 231, 237). The court ordered that the case be remanded to the Supreme Court of the District of Columbia with direction that it award a writ of mandamus "requiring the Secretary of the Interior to proceed to an examination and adjustment of the claim in question in conformity to the statutes as here construed." A judgment to this effect was entered in the Supreme Court and the writ of mandamus issued.

The Secretary of the Interior proceeded to carry out the order of the court, but held upon the advice of the Solicitor for the Department of the Interior and the Attorney General that the right to recover interest paid or incurred was limited to the date of the passage of the act of March 2, 1919, and that interest paid subsequent to that date on obligations incurred prior thereto could not be recovered. Whereupon petitioner instituted the present suit to compel the Secretary of the Interior to comply with the decree theretofore entered in this case and to compel him, as required by the fourth section of the act of 1929, to make final adjustment of the claim "in accordance with the law as construed by the court."

To this the Secretary answered that the law places a limitation upon the allowance to pay obligations for interest after March 2, 1919; that the Secretary conformed to this ruling in making his allowances; that his determination amounted to a finding of fact and not of law. The court below made an order dismissing the petition and from that order this appeal was taken.

We are not impressed with the contention that the ruling of the Secretary amounted merely to the determination of an issue of fact. The holding of the Secretary to the effect that allowance for interest was to stop as of the date of the passage of the 1919 act involved a legal construction of that act and the conclusion reached was a conclusion of law and not of fact. The matters of fact as to the obligations incurred in the prosecution of the enterprise under the war minerals act, and the determination of their allowance, disposed of all questions of fact. The only matter here for determination is the interpretation of the statute as to the allowance of interest on the obligations already ascertained to be allowable.

It is also insisted that the relator is asking the court to make an order requiring the Secretary of the Interior to do exactly
97 what was embraced in the former order, namely, to adjust petitioner's claims in accordance with the order of the Supreme Court of the United States, and that nothing remained for the court below to do but to dismiss the case, an order, it is urged, from which no appeal lies to this court.

Section 5 of the 1919 act authorized the Secretary of the Interior "to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce, either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation." The act limits the Secretary to the allowance only of claims where the expenditures, need or obligations incurred were made in good faith, and that the monies were invested or obligations were incurred between April 6, 1917, and November 12, 1918. Stress is placed upon the language of the act that the claims for money expended or for obligations incurred were in every instance referred to in the past tense, indicating, it is contended, an intention on the part of Congress to fix by the terms of this act a limitation upon the power of the Secretary to make allowances for any obligations arising or incurred beyond the date of the act. It is true that it placed a limitation upon the allowance of any claim that had not arisen or been incurred prior to the passage of the act, but it left open the adjustment of any claim which had been incurred but not paid or finally settled at the date of the passage of the act. It did not enlarge the jurisdiction of the Secretary nor in any way change his power or authority in disposing of cases arising under the original act. It simply provided a remedy for the claimants by way of an appeal to the Supreme Court of the

District of Columbia for a review of the Secretary's finding upon questions of law. The status of the claims, whether for principal or interest, remained the same as when the 1919 statute was enacted.

The jurisdiction conferred upon the Supreme Court of the District by the act of February 13, 1929, is peculiar in that it furnishes a remedy to the claimant to have the action of the Secretary of the Interior reviewed upon questions of law. It is in the nature of an appeal within those limitations and may be repeated as often as is necessary to secure compliance with the order of the court. The action is for a review and revision of the Secretary's finding on "any question of law which has arisen or which may hereafter arise" under the foregoing acts. The present action is to review such a finding. We think the case is clearly within the jurisdiction of the court as prescribed by the act.

It further appears as a matter of fact that the principal sum claimed by the relator had been borrowed and lost and had not been paid on March 2, 1919, and was not then due. Petitioner was obligated to pay the principal sum, and this loss has been conceded by the Secretary to be a loss within the act. It is contended that petitioner was equally obligated on that date to pay the interest. Principal and interest together, it is urged, constituted in the aggregate relator's loss and what it had contracted to pay.

An examination of the statutes fails, in our opinion, to disclose any intention on the part of Congress to limit the recovery of
98 interest paid or incurred on obligations allowable under the provisions of the 1919 act. This court in the Work case (54 App. supra), construing the language of the 1919 act, held that interest paid or obligated to be paid constituted an element of the expenses incurred and allowable under the act. This holding was approved by this court in the later case of United States v. Wilbur, supra. The Supreme Court affirming the latter opinion said: "The amount of interest that at the time of the passage of the relief act, March 2, 1919, had been paid or incurred by relator for money borrowed and lost in producing and preparing to produce pyrites upon the specified conditions is to be taken into account in determining the amount of its net loss as of that date. It constitutes a part of relator's expenditures and cost of the undertaking and so is within the terms of the section as amended."

It is urged that to allow interest on obligations that had been incurred but not paid at the date of the passage of the 1919 act would not constitute a final determination of "the amount of its net loss as of that date." We are not impressed with this contention. The amount of the principal sum being established as of that date, the interest payable thereon can be ascertained at the same time and readily computed at the time of final payment.

In the present case the principal sum was borrowed and lost and had not been paid on March 2, 1919, and was not then due. Relator,

however, was under obligation to pay this principal sum, which is conceded to be a loss within the act, and he was likewise under obligation to pay the interest incurred in the creation of this obligation. In other words relator was as much obligated on that date to pay the interest as it was to pay the principal. The aggregate of the two items at time of payment by the Government, constitute the net loss. If relator could not make claim for the interest because it was not payable at that time then by analogous reasoning relator could not be compensated for the principal debt, which was not due and payable at that time. The justice and equity in the one case is equal and parallel to that in the other, and since the principal amount has been allowed and its allowance approved by the courts, we see no reason why a similar allowance should not be made for the interest incurred prior to the passage of the 1919 act and accrued at the time of the payment of the principal debt to relator by the Government.

The judgment is reversed, and the cause is remanded for further proceedings consistent with this opinion.

JOSIAH A. VAN ORSDEL,
Associate Justice.

A true copy.
Teste:

_____,
Clerk, Court of Appeals, D. C.

99 Monday, December 12th, A. D. 1932

No. 5760. October Term 1932

UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION, appellant,

vs.

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR

Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said Supreme Court for further proceedings consistent with the opinion of this Court.

Per MR. JUSTICE VAN ORSDEL.

December 12, 1932.

I, Henry W. Hodges, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 99, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals in the case of United States of America ex rel. Chestatee Pyrites & Chemical Corporation, appellant, vs. Ray Lyman Wilbur, Secretary of the Interior, No. 5760, January Term, 1933, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 23rd day of January, A. D. 1933.

[SEAL.] HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

U. S. GOVERNMENT PRINTING OFFICE: 1933

In the Court of Appeals of the District of Columbia

JANUARY TERM, 1933

No. 5760

UNITED STATES OF AMERICA EX REL. CHESTATEE Pyrites & Chemical Corporation, Appellant

v.

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR

The retirement of Ray Lyman Wilbur and the appointment of Harold L. Ickes, as Secretary of the Interior, having been suggested, It is on motion filed herein by the Solicitor for the Department of the Interior, Ordered that Harold L. Ickes, Secretary of the Interior, be and he hereby is made the party appellee herein in the place and stead of Ray Lyman Wilbur, retired.

Per Mr. CHIEF JUSTICE MARTIN.

MARCH 7, 1933.

A true copy.

Test:

[SEAL.] HENRY W. HODGES,
Clerk, Court of Appeals, D. C.

164237—33

U. S. GOVERNMENT PRINTING OFFICE: 1933

Supreme Court of the United States

Order allowing certiorari

Filed March 27, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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CITATIONS

Cases:

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Wilbur v. *United States ex rel. Vindicator Consolidated Gold Mining Co.*, 284 U. S. 231 12

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Act of February 13, 1929, c. 182, 45 Stat. 1166 19

102332—33——1

In the Supreme Court of the United States

OCTOBER TERM, 1932

No. —

HAROLD L. ICKES, SECRETARY OF THE INTERIOR, petitioner

v.

UNITED STATES OF AMERICA EX REL. CHESTATEE Pyrites & Chemical Corporation

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

The Solicitor General, on behalf of Harold L. Ickes,[1] Secretary of the Interior, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the District of Columbia entered in the above-entitled cause on December 12, 1932, reversing the judgment of the Supreme Court of the District of Columbia.

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[1] By order entered in the Court of Appeals of the District of Columbia on March 7, 1933, Harold L. Ickes, Secretary of the Interior, was substituted as party appellee in that court in place of Ray Lyman Wilbur, resigned. A certified copy of this order has been filed with the Clerk of this Court.

OPINIONS BELOW

Neither the opinion of the Supreme Court of the District of Columbia (R. 73–78) nor the opinion of the Court of Appeals of the District of Columbia (R. 94–98) has been reported.

JURISDICTION

The judgment of the Court of Appeals of the District of Columbia was entered December 12, 1932. (R. 98.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the petitioner has complied with the order of the Supreme Court of the District of Columbia (R. 35–36) issued pursuant to the mandate of this Court in *Wilbur* v. *United States ex rel. Chestatee Pyrites & Chemical Corporation,* 284 U. S. 231. Answer to this question turns upon whether the petitioner's action in disallowing that part of relator's claim under the War Minerals Relief Act which was based upon interest on borrowed money accruing after March 2, 1919, the effective date of that Act, was erroneous as a matter of law.

STATUTES INVOLVED

These are set forth in the Appendix, pp. 15–20, *infra.*

STATEMENT

On March 5, 1919, the relator, the Chestatee Pyrites & Chemical Corporation, filed with the Secre-

tary of the Interior a claim for losses alleged to have been incurred in connection with the production of pyrites under conditions specified in Section 5 of the War Minerals Relief Act, p. 15, *infra*. (R. 3, 27, 94.) This claim, with respect to which awards totaling approximately $840,000 have from time to time been paid (R. 29, 48, 53, 77), included items of interest on money borrowed and lost by the claimant.[2] The Secretary ruled that under the statute interest on money borrowed was not reimbursable. (R. 5, 13–16, 25, 27, 94–95.)

Thereafter, on July 27, 1923, the relator sought a writ of mandamus in the Supreme Court of the District of Columbia to compel the Secretary to allow the interest claimed. The petition for the writ was apparently broad enough in its allegations to raise the queston of claimant's right to recover interest paid or accrued both before and after March 2, 1919, the effective date of the Relief Act. (See R. 59.) On January 9, 1924, the court held that interest on borrowed money was an allowable item and awarded a writ of mandamus. There is nothing in the court's opinion to indicate that it considered the question of claimant's right to recover interest paid or accruing after March 2, 1919. Upon appeal the judgment of the Supreme Court of the District was affirmed by the Court of Appeals

[2] This claim is not in the record but apparently it was broad enough in terms, as subsequently amended or enlarged, to include interest paid or accruing after March 2, 1919, the date of the Relief Act. (R. 3, 27, 39, 58–59.)

of the District (*Work* v. *United States*, 298 Fed. 839). That court apparently did not consider whether the statute contemplated the allowance of interest paid or accrued after March 2, 1919. In its opinion the court said (p. 841)—

> This narrows the case to the single question of law, whether the item of interest is embraced within the claim for net losses incurred by relator.

Thereafter the decision of the Court of Appeals was reversed by this Court (267 U. S. 185) upon the ground that under the statute the Secretary's decision was final and the courts were without jurisdiction to review it. The briefs of the parties before this Court discussed only the general question whether interest on borrowed money was an allowable item.

On February 13, 1929, Congress amended the War Minerals Relief Act so as to provide that the final decisions of the Secretary of the Interior on questions of law arising under the statute might be reviewed by the Supreme Court of the District of Columbia. (P. 19, *infra*.) The relator thereupon brought an action in that court for a writ of mandamus to compel the Secretary to take jurisdiction of and allow its claim for interest on borrowed money. (R. 2–7.) On March 7, 1930, that court denied mandamus, holding that interest was not an allowable item. Appeal was taken to the Court of Appeals of the District on assignments of errors which did not specifically distinguish

between interest accruing before and interest accruing after March 2, 1919, but which did refer to a claim for interest which "appellant obligated itself to pay for the use of borrowed money." (See record in No. 67, October Term, 1931, p. 28.) On February 2, 1931, the Court of Appeals reversed the judgment of the Supreme Court of the District, holding that interest was an allowable item. (47 F. (2d) 424.) The opinion of the Court of Appeals does not specifically deal with the question whether the allowance of interest should be limited to that paid or accrued prior to the passage of the statute, but the court did say that "interest paid or obligated to be paid in this case should be allowed." Upon certiorari, this Court affirmed the judgment of the Court of Appeals (284 U. S. 231) and remanded the case to the Supreme Court of the District of Columbia—

> with directions to award a writ of mandamus requiring the Secretary of the Interior to proceed to an examination and adjustment of the claim in question conformably to the statutes as construed in the opinion of this Court.

Nothing in the briefs of either party filed in this Court specifically raised or called to the attention of this Court the question whether interest paid and accruing after March 2, 1919, was allowable. The Court said in its opinion (p. 238):

> The amount of interest that at the time of the passage of the Relief Act March 2,

> 1919, had been paid or incurred by relator for money borrowed and lost in producing and preparing to produce pyrites upon the specified conditions is to be taken into account in determining the amount of its net loss as of that date.

On December 15, 1931, the Supreme Court of the District of Columbia entered an order upon the mandate of this Court, that (R. 35–36):

> a writ of mandamus do issue out of and under the seal of this court, directed to Ray Lyman Wilbur, as Secretary of the Interior, commanding him forthwith to proceed to ascertain the amount of interest that, at the time of the passage of the act of Congress of March 2, 1919, Chapter 94, had been paid or the obligation incurred by the relator for money borrowed and lost in producing and preparing to produce pyrites * * *.

Waiving the formal issuance of a writ of mandamus (R. 86), the Secretary proceeded to carry out the order of the court, and, after reviewing relator's claim, made an award of $44,451.45, this amount representing (R. 48)—

> the amount of interest that at the time of the passage of the act of Congress of March 2, 1919, had been paid or the obligations incurred by the relator for money borrowed and lost in producing and preparing to produce pyrites at the request or demand of the Department of the Interior * * *, and for which in justice and equity the

> relator was entitled to receive reimbursement * * *.

The relator thereupon filed in the Supreme Court of the District a document entitled "Petition to Enforce Decree" (R. 36–43) which alleged that the Secretary had disregarded the law and the mandate of this Court in that he had refused to allow relator its net losses growing out of—

> obligations incurred to pay interest beyond March 2, 1919, * * * although such obligations were incurred prior to November 12, 1918, and were existing on and prior to March 2, 1919, and were and are continuing to run thereafter.

The petition alleged that the amount of interest owing to relator as of December 31, 1931, after allowing for the award of $44,451.45, was $524,276.43, and prayed that the Secretary be directed to award interest paid and obligated to be paid for money borrowed by relator "according to the terms and tenor of the obligations to the date that payment therefor is made." Thereupon, the court apparently issued a rule upon the Secretary to show cause why he had not complied with the decree of December 31, 1931.[3] The Secretary filed an answer to the rule (R. 45–52, 96) in which he averred that he had complied with the decree by allowing to relator all interest paid or accrued prior to March 2, 1919. The relator filed a traverse to the Secretary's answer (R. 65–73), whereupon testimony was taken

[3] This rule does not appear in the record.

in open court upon the pleadings (R. 73, 82). On June 7, 1932, the court filed a memorandum opinion holding that the Secretary had fully complied with the decree of December 15, 1931 (R. 73–78), and thereafter entered an order that relator's petition be denied (R. 78–79). Upon appeal to the Court of Appeals the judgment was reversed, that court holding that the War Minerals Relief Act did not limit the recovery of interest to that paid or accrued prior to the effective date of the statute.[4] (R. 94–98.)

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

(1) In holding that the mandate and decision of this Court do not limit the recovery of interest on borrowed money to interest paid or accrued prior to the effective date of the War Minerals Relief Act;

(2) In holding that the relator is entitled to recover the amount of any net loss incurred by it by reason of interest paid or accrued after March 2, 1919, on money borrowed by it;

[4] Relator's computation of the amount of interest owing to it as of December 31, 1931, appears at R. 41, 70–73. The Court of Appeals did not consider whether this computation was correct, apparently assuming that the amount of interest owing to relator could be easily ascertained after determination of the question whether relator is entitled to interest accruing after March 2, 1919. Apparently no computation of interest beyond March 2, 1919, has been made by the Secretary. (R. 84.) His answer to the rule to show cause (R. 49, 51) would indicate that in his opinion relator's computation is erroneous, even if relator is entitled to interest accruing after March 2, 1919.

(3) In holding that the decision of the Secretary of the Interior that the allowance of interest on borrowed money must stop as of the effective date of the War Minerals Relief Act was erroneous;

(4) In holding that this Court has construed the Act of March 2, 1919, as amended, to require petitioner to consider relator's claim for interest accruing after its passage;

(5) In holding that petitioner has not complied with the decree of the Supreme Court of the District of Columbia of December 15, 1931, entered upon the mandate of the Court in *Wilbur* v. *United States ex rel. Chestatee Pyrites and Chemical Corporation,* 284 U. S. 231.

(6) In reversing the judgment of the Supreme Court of the District of Columbia and remanding the cause for further proceedings.

REASONS FOR GRANTING THE WRIT

1. The question presented involves the compliance of the parties with the mandate of this Court in *Wilbur* v. *United States ex rel. Chestatee Pyrites & Chemical Corp.,* 284 U. S. 231. In that case the Court held that under Section 5 of the War Minerals Relief Act, as amended, interest on money borrowed and lost in producing or preparing to produce minerals under conditions specified in the statute should be taken into account by the Secretary of the Interior in determining the amount of a claimant's net loss. While the petition for mandamus upon which that case arose was

broad enough to cover interest paid and accruing after the effective date of the Relief Act, the question discussed in the briefs of the parties and in the oral argument was whether *any interest* was an allowable item under the statute, and no direct reference was made to the question whether the statute limited the interest allowable to that paid or accrued prior to the effective date thereof.

This Court remanded the case to the Supreme Court of the District of Columbia "with directions to award a writ of mandamus requiring the Secretary of the Interior to proceed to an examination and adjustment of the claim in question conformably to the statutes as here construed." The order of the Supreme Court of the District of Columbia issued on December 15, 1931, upon the mandate (R. 35–36), directed the issuance of a writ of mandamus to the Secretary—

> commanding him forthwith to proceed to ascertain the amount of interest that, at the time of the passage of the act of Congress of March 2, 1919, Chapter 94, had been paid or the obligation incurred by the relator for money borrowed and lost * * *.

The Secretary of the Interior has construed the mandate and decree as requiring the allowance only of interest paid or accrued prior to the effective date of the statute, and the Secretary has made an award of such interest in the amount of $44,451.45. The Supreme Court of the District has held that this is a full compliance with its decree and

the mandate of this Court. The relator contends that the Secretary has not complied with the mandate and decree, that it is entitled to interest on any indebtedness incurred pursuant to the statute *until, if ever, such indebtedness is paid,* and it asserts that the amount of such interest as of December 31, 1931, after allowing for the award of $44,451.45, is $524,276.43. The relator's contention has been upheld by the Court of Appeals.

2. We believe that the mandate of this Court has been misunderstood in the court below and that this Court's interpretation of its own mandate is necessary to carry out its judgment.

Section 5 of the War Minerals Relief Act, p. 15, *infra,* authorizes the Secretary of the Interior—

> to adjust, liquidate, and pay such net losses *as have been suffered* by any person, firm, or corporation * * *. (Italics ours.)

under specified conditions. This language clearly indicates that the recoverable losses are limited to those sustained at or prior to the effective date of the statute.

In its opinion required to be followed by its mandate, 284 U. S. 231, this Court said (p. 238):

> The amount of interest that *at the time of the passage of the Relief Act March 2, 1919, had been paid or incurred* by relator for money borrowed and lost in producing and preparing to produce pyrites upon the specified conditions is to be taken into account in determining the amount of its net loss *as of that date.* (Italics ours.)

While the question whether interest paid or accrued after March 2, 1919, is recoverable under the statute was not argued in the briefs or orally, it was, to say the least, " lurking in the record," and the language above quoted seems to indicate that in the opinion of this Court such interest is not recoverable.

These views find confirmation in the decision of this Court in *Wilbur* v. *United States ex rel. Vindicator Consolidated Gold Mining Co.*, 284 U. S. 231. There the Court held that under Section 5 of the Relief Act, as amended, the Secretary was empowered to take into account losses arising out of expenditures for the purchase of land to which the claimant retained title after the enactment of the statute. In this connection the Court said (p. 237)—

> The Secretary is required to proceed to ascertain whether relator, on March 2, 1919, had incurred net loss by reason of the expenditure of $16,259 for such land; * * *.

The inference from this holding is that losses occurring after March 2, 1919, through further depreciation or shrinkage in the value of land acquired during the period of stimulation, the ownership of which was retained after March 2, 1929, are not recoverable. As pointed out in the opinion of the Attorney General (R. 63), there is no distinction—

> in principle between losses suffered after March 2, 1919, through further shrinkage of land values and losses suffered after March

> 2, 1919, through continued accrual of interest on obligations previously incurred and which the claimant had not been able or did not see fit to pay off.[5]

The petitioner contends that Congress intended by the War Minerals Relief Act to limit the recoverable losses to those incurred at or prior to the effective date of the statute, and that it did not intend to authorize the Secretary to allow and pay interest indefinitely to such period as the claimant might see fit to extend its liability. The statute was not predicated upon the recognition of an indebtedness but was a mere "gratuity based on equitable and moral considerations." *Work* v. *Rives*, 267 U. S., 175, 181.

3. The question presented is of general importance and determination thereof is deemed to be necessary in the proper administration of the War Minerals Relief Act by the administrative official charged with its enforcement. Although definite information is not available as to the number of pending claims which involve the question here presented, we are advised by the Department of the Interior that such question is presented in numerous pending claims and that the aggregate amount of interest involved in such claims is very

[5] In its memorandum opinion the Supreme Court of the District said (R. 76): "It appears from the facts hereafter discussed that in all probability plaintiff never will be able to pay its entire interest-bearing debt. Its contention in effect is that it is entitled to a permanent annual payment on its unpaid debt.

large. (See footnote 2, p. 10, in the petition for a writ of certiorari in *Wilbur* v. *United States ex rel. Chestatee Pyrites & Chemical Corporation,* 284 U. S. 231.)

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

THOMAS D. THACHER,
Solicitor General.

MARCH, 1933.

APPENDIX

Extract from the Act of March 2, 1919, known as the War Minerals Relief Act, c. 94, 40 Stat. 1272, 1274:

SEC. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce, either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war; said minerals being enumerated in the Act of Congress approved October fifth, nineteen hundred and eighteen, entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."

The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; that all payments and expenses incurred by said Secretary, including personal services, traveling

and subsistence expenses, supplies, postage, printing, and all other expenses incident to the proper prosecution of this work, both in the District of Columbia and elsewhere, as the Secretary of the Interior may deem essential and proper, shall be paid from the funds appropriated by the said Act of October fifth, nineteen hundred and eighteen, and that said funds and appropriations shall continue to be available for said purpose until such time as the said Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed: *Provided, however,* That the payments and disbursements made under the provisions of this section for and in connection with the payments and settlements of the claims herein described, and the said expenses of administration shall in no event exceed the sum of $8,500,000: *And provided further,* That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this Act: *And provided further,* That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance: *And provided further,* That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen

hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce either manganese, chrome, pyrites, or tungsten for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary: *And provided further,* That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns of any party.

That a report of all operations under this section, including receipts and disbursements, shall be made to Congress on or before the first Monday in December of each year.

That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States: *Provided further,* That in determining the net losses of any claimant the Secretary of the Interior shall, among other things, take into consideration and charge to the claimant, the then market value of any ores or minerals on hand belonging to the claimant, and also the salvage or usable value of any machinery or other appliances which may be

claimed was purchased to equip said mine for the purpose of complying with the request or demand of the agencies of the Government above mentioned in the manner aforesaid.

Act of November 23, 1921, c. 137, 42 Stat. 322:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Act approved March 2, 1919, entitled "An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," be, and the same is hereby, amended as follows:

Add to the first paragraph of section 5 the following proviso: "*Provided,* That all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said Act, in good faith expended money in producing or preparing to produce any of the ores or minerals named therein and have heretofore mailed or filed their claims or notice in writing thereof within the time and in the manner prescribed by said Act, if the proof in support of said claims clearly shows them to be based upon action taken in response to such request, demand, solicitation or appeal, shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation in said Act.

"If in claims passed upon under said Act awards have been denied or made on rulings contrary to the provisions of this amendment, or through miscalculation, the Secretary of the Interior may award proper amounts or additional amounts."

Act of February 13, 1929, c. 182, 45 Stat. 1166:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any claimant who has heretofore filed with the Secretary of the Interior within the time and manner provided by existing law a claim under said Acts generally known as the War Minerals Acts (Fortieth Statutes, page 1272, and its amendments) may within one year from the date of the passage and approval hereof petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said Acts, but the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court.

SEC. 2. In any proceeding brought under the provisions of section 1 of this Act the Secretary of the Interior shall be designated as the defendant or respondent, and upon the filing of the petition the cause shall follow the usual procedure, subject to such rules or orders as the court may make with respect thereto.

SEC. 3. Jurisdiction is hereby conferred upon the Supreme Court of the District of Columbia, as a district court of the United States, to hear and determine all such suits and enter all orders, judgments, and decrees therein, subject to the usual right of appeal by either party to the Court of Appeals of the District of Columbia, whose final judgment may be reviewed by the Supreme Court of the United States by petition for

certiorari or by appeal as provided by law and the rules of the court.

SEC. 4. Upon the final disposition of such proceeding, the clerk of the Supreme Court of the District of Columbia shall without delay certify to the Secretary of the Interior the final judgment or decree rendered therein, whereupon the Secretary of the Interior shall proceed with the final adjustment of said claim in accordance with the law as construed by the court in such judgment or decree.

U. S. GOVERNMENT PRINTING OFFICE: 1938

FILE COPY

No. 767

In the Supreme Court of the United States

October Term, 1946

HAROLD L. ICKES, SECRETARY OF THE INTERIOR, PETITIONER

v.

UNITED STATES OF AMERICA EX REL. CHESAPEAKE POTOMAC TELEPHONE COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENT

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In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 767

HAROLD L. ICKES, SECRETARY OF THE INTERIOR, petitioner

v.

UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the Supreme Court of the District of Columbia (R. 73–78) has not been reported. The opinion of the Court of Appeals of the District of Columbia (R. 94–98) is reported in 62 F. (2d) 863.

JURISDICTION

The judgment of the Court of Appeals of the District of Columbia was entered December 12, 1932 (R. 98). Petition for certiorari was filed

March 11, 1933, and was granted March 27, 1933 (R. 101). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the petitioner has complied with the order of the Supreme Court of the District of Columbia (R. 35–36) issued upon the mandate of this Court in *Wilbur* v. *United States ex rel. Chestatee Pyrites & Chemical Corporation*, 284 U.S. 231. Answer to this question turns partly upon whether the action of petitioner's predecessor in disallowing that part of relator's claim under the War Minerals Relief Act which was based upon interest on borrowed money accruing after March 2, 1919, the effective date of that Act, was erroneous as a matter of law.

STATUTES INVOLVED

These are set forth in Appendix A, pp. 28–33, *infra*.

STATEMENT

On March 5, 1919, the relator, the Chestatee Pyrites & Chemical Corporation, filed with the Secretary of the Interior a claim for losses alleged to have been incurred in connection with the production of pyrites under conditions specified in Section 5 of the War Minerals Relief Act, p. 28, *infra* (R. 3, 27, 94). This claim, with respect to which awards totaling $829,850 have from time to time been

paid (R. 29, 48, 53, 77; see pp. 23–24, *infra*), included items of interest on money borrowed and lost by the claimant.[1] In September, 1922 (R. 11), the Secretary ruled that under the statute interest on money borrowed was not reimbursable (R. 5, 13–16, 25, 27, 94–95).

Thereafter, on July 27, 1923, the relator sought a writ of mandamus in the Supreme Court of the District of Columbia to compel the Secretary to allow the interest claimed. On January 9, 1924, that court held that interest on borrowed money was an allowable item and awarded a writ of mandamus. There is nothing in the court's opinion to indicate that it considered the question of claimant's right to recover interest paid or accruing after March 2, 1919. Upon appeal the judgment was affirmed by the Court of Appeals of the District (*Work* v. *United States,* 298 Fed. 839). Although that court said that "the interest paid or obligated to be paid" should be allowed, it apparently did not consider whether the statute contemplated the allowance of interest paid or accrued after March 2, 1919. In its opinion the court said (p. 841)—

> This narrows the case to the single question of law, whether the item of interest is embraced within the claim for net losses incurred by relator.

[1] This claim is not in the record but apparently it was broad enough in terms, *as subsequently amended*, to include interest paid or accruing after March 2, 1919, the date of the Relief Act (R. 3, 27, 39, 58–59).

Thereafter the decision of the Court of Appeals was reversed by this Court (*Work* v. *Chestatee Co.*, 267 U.S. 185) upon the ground that under the statute the courts were without jurisdiction to review the Secretary's decision. The briefs of the parties before this Court discussed only the general question whether interest on borrowed money was an allowable item.

On February 13, 1929, Congress amended the War Minerals Relief Act so as to provide that the final decisions of the Secretary of the Interior on questions of law arising under the statute might be reviewed by the Supreme Court of the District of Columbia (p. 32, *infra*). The relator thereupon brought an action in that court for a writ of mandamus to compel the Secretary to take jurisdiction of and allow its claim for interest on borrowed money (R. 2–7). The relator's petition alleged that its claim consisted of "interest paid on borrowed money and obligations incurred to pay interest thereon" (R. 6). On March 7, 1930, that court denied mandamus, holding that interest was not an allowable item.

Appeal was taken to the Court of Appeals of the District on assignments of errors which did not specifically distinguish between interest accruing before and interest accruing after March 2, 1919, but which did refer to a claim for interest which "appellant obligated itself to pay for the use of borrowed money." (See record in No. 67, October

Term, 1931, p. 28.) On February 2, 1931, the Court of Appeals reversed the judgment of the Supreme Court of the District, holding that interest was an allowable item (47 F. (2d) 424). The opinion of the Court of Appeals does not specifically deal with the question whether the allowance of interest should be limited to that paid or accrued prior to the passage of the statute, but the court did say that "interest paid or obligated to be paid in this case should be allowed." Upon certiorari, this Court affirmed the judgment of the Court of Appeals (284 U.S. 231) and remanded the case to the Supreme Court of the District of Columbia—

> with directions to award a writ of mandamus requiring the Secretary of the Interior to proceed to an examination and adjustment of the claim in question conformably to the statutes as construed in the opinion of this Court.[2]

Nothing in the briefs of either party filed in this Court specifically raised or called to the attention of this Court the question whether interest paid and accruing after March 2, 1919, was allowable. The Court said in its opinion (p. 238):

> The amount of interest that at the time of the passage of the Relief Act March 2, 1919, had been paid or incurred by relator for money borrowed and lost in producing

[2] The mandate of this Court does not appear in the record in the instant case, but the matter above quoted constitutes the "directing" portion thereof.

> and preparing to produce pyrites upon the specified conditions is to be taken into account in determining the amount of its net loss as of that date.

On December 15, 1931, the Supreme Court of the District of Columbia entered an order upon the mandate of this Court, that (R. 35–36)—

> a writ of mandamus do issue out of and under the seal of this court, directed to Ray Lyman Wilbur, as Secretary of the Interior, commanding him forthwith to proceed to ascertain the amount of interest that, at the time of the passage of the act of Congress of March 2, 1919, Chapter 94, had been paid or the obligation incurred by the relator for money borrowed and lost in producing and preparing to produce pyrites * * *.

Waiving the formal issuance of a writ of mandamus[3] (R. 86), the Secretary proceeded to carry out the order of the court, and, after reviewing relator's claim, made an award of $44,451.45,[4] this amount representing (R. 48)—

> the amount of interest that at the time of the passage of the act of Congress of March 2, 1919, had been paid or the obligations incurred by the relator for money borrowed and lost in producing and preparing to

[3] No formal writ of mandamus was issued. The statement in the opinion of the Court of Appeals (R. 95) to the contrary was apparently an inadvertence.

[4] This award does not appear in the record, but for the information of the Court it has been set forth herein as Appendix B, pp 33–38, *infra*.

> produce pyrites * * *, and for which in justice and equity the relator was entitled to receive reimbursement * * *.

The relator thereupon filed in the Supreme Court of the District a document entitled "Petition to Enforce Decree"[5] (R. 36–43) which alleged that the Secretary had disregarded the law and the mandate of this Court in that he had refused to allow relator its net losses growing out of—

> obligations incurred to pay interest beyond March 2, 1919, * * * although such obligations were incurred prior to November 12, 1918, and were existing on and prior to March 2, 1919, and were and *are continuing to run thereafter*. (Italics ours.)

The petition alleged that the amount of interest owing to relator as of December 31, 1931, after allowing for the award of $44,451.45, was $524,276.43, and prayed that the Secretary be directed to award interest paid and obligated to be paid for money borrowed by relator "according to the terms and tenor of the obligations to the date that payment therefor is made."

Thereupon, the court apparently issued a rule upon the Secretary to show cause why he had not complied with the order of December 31, 1931[6] (R.

[5] The petitioner contended in the Court of Appeals that there was no statutory or common law authority which authorized the filing of an ancillary petition of such a nature in a mandamus proceeding. This point was not urged in the petition for a writ of certiorari. (See R. 86.)

[6] This rule does not appear in the record.

73). The Secretary filed a response to the rule (R. 45–52, 96) in which he averred that he had complied with the decree by allowing to relator all interest paid or accrued prior to March 2, 1919, which was all the interest to which in justice and equity it was entitled. The relator filed a traverse to the Secretary's response (R. 65–73), whereupon testimony was taken in open court upon the pleadings (R. 73, 82). On June 7, 1932, the court filed a memorandum opinion holding that the Secretary had fully complied with the order of December 15, 1931 (R. 73–78), and thereafter entered an order that relator's petition be denied (R. 78–79). Upon appeal to the Court of Appeals the judgment was reversed, the court holding that the War Minerals Relief Act did not limit the recovery of interest to that paid or accrued prior to the effective date of the statute (R. 94–98).

SPECIFICATION OF ERRORS

The Court of Appeals erred—

(1) In holding that the mandate and decision of this Court do not limit the recovery of interest on borrowed money to interest paid or accrued prior to the effective date of the War Minerals Relief Act;

(2) In holding that the relator is entitled to recover the amount of any net loss incurred by it by reason of interest paid or accrued after March 2, 1919, on money borrowed by it;

(3) In holding that the decision of the Secretary of the Interior that the allowance of interest on borrowed money must stop as of the effective date of the War Minerals Relief Act was erroneous;

(4) In holding that this Court has construed the Act of March 2, 1919, as amended, to require petitioner to consider relator's claim for interest accruing after its passage;

(5) In holding that petitioner has not complied with the order of the Supreme Court of the District of Columbia of December 15, 1931, entered upon the mandate of this Court in 284 U.S. 231.

(6) In reversing the judgment of the Supreme Court of the District of Columbia.

SUMMARY OF ARGUMENT

I

The order of the Supreme Court of the District of Columbia issued upon the mandate of this Court required the Secretary to ascertain the amount of interest which on March 2, 1919, "had been paid or the obligation incurred by the relator." This order must be interpreted in the light of the opinion of this Court in which the Court said, in effect, that no loss on account of interest was allowable under the statute unless the Secretary was satisfied, and had determined as a matter of fact, that the loss was one for which relator in justice and equity is entitled to reimbursement. The Secretary has awarded relator all interest paid or ac-

accrued prior to March 2, 1919, and has found, as a matter of fact, that relator is not entitled in justice and equity to any further allowance for interest. The Secretary's action constitutes full compliance with the order of the Supreme Court of the District and the mandate of this Court.

II

The War Minerals Relief Act does not authorize the allowance of interest paid or accruing after March 2, 1919, the effective date of that Act. Section 5 of the statute authorizes the Secretary to pay "such net losses as have been suffered" by any person under the conditions specified. The statute thus limits the recoverable losses to those which were sustained at or prior to its effective date. A loss arising out of an obligation to pay interest is not sustained or suffered until the interest is paid, or, at the earliest, until the obligation to pay it accrues. Accordingly, losses from interest paid or accruing after March 2, 1919, are not losses which "have been suffered" on or prior to that date. This conclusion is affirmed by the opinion of this Court, by the general scope and purpose of the statute, and by its legislative history.

III

If any interest paid or accruing after March 2, 1919, is allowable under the statute, it is only interest paid or accruing up to the time of the

payment to relator of sums sufficient to discharge its allowable interest-bearing indebtedness. The relator is entitled to interest on borrowed capital only where such capital was lost under the conditions specified in the statute. The fact that relator did not apply the payments which it received from the Secretary to reduce its interest-bearing indebtedness cannot operate to increase or extend the Government's obligation to pay interest under the statute.

I

THE SECRETARY HAS COMPLIED WITH THE ORDER OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA ISSUED PURSUANT TO THE MANDATE OF THIS COURT

On December 15, 1931, the Supreme Court of the District entered an order (R. 35–36) that a writ of mandamus issue commanding the Secretary—

> forthwith to proceed to ascertain the amount of interest that, at the time of the passage of the act of Congress of March 2, 1919, * * * had been paid or the obligation incurred by the relator for money borrowed and lost * * *.

This order accurately reflected the mandate of this Court pursuant to which it was issued (284 U.S. 231, 238). In its opinion this Court said that the amount of interest that at the time of the passage of the Relief Act had been paid or incurred by relator for money borrowed and lost under the conditions specified was to be taken into account in

determining its net loss "as of that date." This Court further said (p. 238):

> But the mere fact that such interest was lost does not entitled relator to have, or warrant the Secretary in allowing, any part of it. * * * And the Secretary, upon a consideration of all the circumstances and with due regard to the provisions of the section as amended, must be satisfied, and determine as a matter of fact, *that an allowance on account of such interest is just and equitable* and that the loss is one for which relator *in justice and equity is entitled* to be reimbursed * * *. (Italics ours.)

From the Secretary's response to the rule to show cause (R. 47-52) it appears that, pursuant to the order of the Supreme Court of the District, the Secretary carefully reviewed relator's claim, and awarded relator $44,451.45, this amount representing all interest on money borrowed and lost by relator under the conditions specified, which had been paid or accrued up to March 2, 1919. In his response the Secretary further alleged (R. 51)—

> that in compliance with the requirement aforesaid, he has determined, *as a matter of fact, that it would not be just and equitable to award the relator any interest computed beyond March 2, 1919,* as a loss sustained under the terms of the War Minerals act.
>
> * * * that he reached this conclusion by reason of the fact that the awards of $693,313.79 heretofore paid to the respondent

made it possible for the respondent to discharge its interest-bearing obligations in full and in that way to stop the running of interest, and also because of the reasons stated below.

* * * that *in determining what interest in justice and equity should be paid* to War Minerals claimants, it was necessary for him to fix a limit of time beyond which the payment of interest would, in his judgment, cease to be just and equitable.

* * * that *justice and equity* required that the limit so fixed should be definite, and *applicable to all War Minerals claimants alike.* (Italics ours.)

The allegations in the Secretary's response, which are not contradicted in the record,[7] establish clearly that, in the Secretary's opinion, the allowance to

[7] We interpret the testimony of the Assistant Secretary (R. 82–84) as meaning only that the Secretary doubted his authority, as a matter of law, to make an allowance of interest after March 2, 1919. Moreover, Mr. Edward's testimony shows that the matter went from him to the Secretary, and there is nothing in the record which indicates that the Secretary did not dispose of the matter upon the basis set forth in his response.

Attention is called to the fact that the Secretary's second award to relator of $469,784.62, under date of September 28, 1922 (R. 24–25), while denying interest on borrowed money (R. 13–15), included $64,500 as a *financing charge* (R. 16–20) of 10 percent on the relator's principal indebtedness. Although this fact was not referred to in the Secretary's response in the instant case (R. 47–52), it was undoubtedly one of the reasons why the Secretary ruled that *in justice and equity* the relator was not entitled to interest paid or accruing after March 2, 1919.

relator of interest beyond March 2, 1919, would not, as a matter of fact, be just and equitable. The denial of relator's claim for further interest was thus placed by the Secretary not only on the ground that such interest was not allowable under the decision of this Court but also upon the ground that the loss in question was not "one for which relator in justice and equity is entitled to be reimbursed." (284 U.S. 231, 238.)

Unless the provision in the statute (p. 28, *infra*) that the Secretary shall make only such payments as he shall deem to be "just and equitable", a provision which this Court carefully recognized in its opinion, is to be completely disregarded, we think the conclusion inescapable that the Secretary has fully complied with the order of the Supreme Court of the District of Columbia and the mandate of this Court. Cf. *West* v. *Hitchcock,* 205 U.S. 80, 85–86.

II

THE WAR MINERALS RELIEF ACT DOES NOT AUTHORIZE THE ALLOWANCE OF INTEREST PAID OR ACCRUING AFTER MARCH 2, 1919, THE EFFECTIVE DATE OF THAT ACT

Section 5 of the War Minerals Relief Act, p. 28, *infra,* authorizes the Secretary of the Interior—

> to adjust, liquidate, and pay such net *losses as have been suffered* by any person, firm, or corporation * * * (Italics ours)—

in producing or preparing to produce certain minerals under specified conditions. That section further provides that—

> no claim shall be allowed * * * unless * * * the expenditures so made or obligations so incurred by the claimant *were made* in good faith * * *. (Italics ours.)

This language clearly indicates that the recoverable "losses" are limited to those sustained at or prior to the effective date of the statute. While it is now clear that interest paid or accrued prior to March 2, 1919, on money borrowed and lost under the conditions specified is recoverable (284 U.S. 231), there is no intimation in the statute of an intention that the Secretary should continue to allow and pay interest in the future to whatever date the claimant may have seen fit to fix or extend its liability. A claimant may have chosen to obligate himself to pay interest for twenty or thirty, or more, years in the future; nothing appears in the statute indicating an intent on the part of Congress to assume obligations of such continuing and future character.

In its opinion in this case, required to be followed by its mandate, this Court said (284 U.S. 231, 238):

> The amount of interest that *at the time of the passage of the Relief Act March 2, 1919, had been paid or incurred* by relator for money borrowed and lost in producing and preparing to produce pyrites upon the specified conditions is to be taken into account in determining the amount of its net loss *as of that date.* (Italics ours.)

While, as brought out in the statement of facts (p. 5, *supra*), the question whether interest paid

or accrued after March 2, 1919, is recoverable under the statute was not argued in the briefs or orally in this Court, such question was present in the case, and the language above quoted seems to indicate that in the opinion of this Court such interest is not recoverable. The word "incurred" in the language quoted was clearly used, we think, in its sense of meaning "accrued", since otherwise purely grammatical considerations would require the word "incurred" to be construed as "the obligation to pay which had been incurred." To so construe the word would, in our opinion, render the decision of this Court inconsistent with the statute, and would require the amount of relator's loss "as of that date", March 2, 1919, to be determined in the light of events then unforseeable and occurring long after that date. This we do not think Congress intended.

This view finds confirmation in the decision of this Court in *Wilbur* v. *United States ex rel. Vindicator Consolidated Gold Mining Co.*, 284 U.S. 231. There the Court held that under Section 5 of the Relief Act, as amended, the Secretary was empowered to take into account losses arising out of expenditures for the purchase of land to which the claimant retained title after the enactment of the statute. In this connection the Court said (p. 237):

> The Secretary is required to proceed to ascertain whether relator, on March 2, 1919,

> had incurred net loss by reason of the expenditure of $16,259 for such land; * * *

The clear inference from this holding is that losses occurring after March 2, 1919, through further depreciation or shrinkage in the value of land acquired during the period of stimulation, the ownership of which was retained after March 2, 1929, are not recoverable. As pointed out in an opinion of former Attorney General Mitchell rendered in connection with the question presented in the instant case (R. 63), there is no distinction—

> in principle between losses suffered after March 2, 1919, through further shrinkage of land values and losses suffered after March 2, 1919, through continued accrual of interest on obligations previously incurred and which the claimant had not been able or did not see fit to pay off.

If, as held by this Court, interest paid or accrued *prior* to March 2, 1919, on money borrowed and lost by relator constitutes a "loss", it may be truly said that interest paid or accrued at any time is a "loss," but we contend that such losses are not recoverable unless "suffered" before the passage of the Act. A loss arising out of an obligation to pay interest is not sustained or "suffered" until the interest is paid, or until, at the earliest, the obligation to pay it becomes due. Until the interest is paid or the obligation to pay it has accrued there is no loss, since there is always the chance that the creditor

may forgive the claim or the debtor in some other fashion may escape the payment thereof. Cf. *Burnet* v. *Huff*, No. 58, present term, decided February 6, 1933; *Lucas* v. *American Code Co.*, 280 U.S. 445, 449; *Weiss* v. *Wiener*, 279 U.S. 333, 335. Accordingly, losses arising out of interest paid or accruing after March 2, 1919, are not losses which "have been suffered" on or prior to that date. It is to such losses only that the statute in express terms limits recovery.

The conclusions above asserted are consistent with the general scope and purpose of the War Minerals Relief Act. As its title indicates, the statute was one for "relief." The sudden termination of the war and the consequent disappearance of the ore market left most war-mineral ventures in financial difficulties, and the Act was passed to relieve such difficulties. (See *Work* v. *Rives*, 267 U.S. 175; see also R. 13–14.) But claimants under the statute did not undertake their mining operations wholly from patriotic motives. Even when "stimulated" by Government officials, they did not proceed entirely without hope of profit, and under conditions existing at the time they were warranted in anticipating profits. Accordingly, Congress did not by the Relief Act undertake to compensate claimants fully and make them whole. As pointed out by this Court, Congress "dealt with the subject with the utmost caution", and the statute was not predicated upon the recognition of an indebtedness, but was a mere "gratuity based on equitable and

moral considerations." *Work* v. *Rives,* 267 U.S. 175, 181, 182. These circumstances call not so much for a liberal construction of the statute as they do for its strict limitation to those who can demonstrate that they fall both within its letter and spirit.

Some light as to the extent to which Congress intended interest payments to run is found in the legislative history of the Act of February 13, 1929, p. 32, *infra,* under which the present action was originally instituted. That Act was passed chiefly to permit the *courts* to determine whether Section 5 of the Relief Act authorized the Secretary to make allowances for "money expended in the purchase of property or for interest on borrowed capital." Both in the House Committee Report and on the floor of Congress it was emphasized that if the statute did permit such allowances there would be an expenditure involved "of not more than $3,000,000'. (House Rept. No. 2250, 70th Cong., 2d Sess., p. 2; Cong. Rec., Vol. 70, pp. 2799–2800.) Keeping in mind that the claims for money expended for property far exceeded in amount the claims for interest on borrowed capital and that the former claims alone were expected to approximate $3,000,000 (see footnote 2, p. 10, in the petition for certiorari in No. 67, October Term, 1931; see also Sen. Rep. No. 292, 68th Cong., 1st sess., p. 2), the fact that the estimated expenditure was so completely inadequate to meet the claims for interest *if interest was payable after March 2, 1919* (the

claim of relator alone exceeds $500,000 as of December 31, 1931 (R. 41)), is some evidence that Congress did not think, in 1929, at least, that interest was payable *after that date.*

United States v. *New York,* 160 U.S. 598, cited by this Court when this case was previously before it (284 U.S. 231, 238), is not inconsistent with the petitioner's contentions. That case involved a suit in the Court of Claims against the United States by the State of New York under the Act of July 27, 1861, c. 21, 12 Stat. 276, which directed the repayment of the "costs, charges, and expenses properly incurred" by a State in supplying and equipping troops for the suppression of the rebellion. A subsequent Act, approved March 8, 1862, 12 Stat. 615, declared that the previous Act should be construed "to apply to expenses *incurred as well after as before* the date of the approval thereof." (Italics ours.) This Court held in the case cited that money *paid* by the State as interest upon its bonds which had been issued to raise money for the purposes specified constituted a part of the "costs, charges, and expenses" properly incurred by it for those objects. There, unlike the situation in the instant case, the Court was dealing with a statute couched in broad, inclusive terms, the express purpose of which was to indemnify and reimburse the State, and which in specific terms was applicable to expenses incurred *after its effective date.* (See *Work* v. *Chestatee Co.,* 267 U.S. 185, 187.)

III

IF ANY INTEREST PAID OR ACCRUING AFTER MARCH 2, 1919, IS ALLOWABLE UNDER THE STATUTE, IT IS ONLY INTEREST PAID OR ACCRUING UP TO THE TIME OF THE PAYMENT TO RELATOR OF SUMS SUFFICIENT TO DISCHARGE ITS *ALLOWABLE* INTEREST-BEARING INDEBTEDNESS.

Assuming for argument that that statute does not inhibit the allowance of interest paid or accruing after March 2, 1919, we contend that the relator's claim as to the amount of such interest owing to it is based upon erroneous principles.

In its "Petition to Enforce Decree" (R. 36–43) the relator sets forth the principal amounts of its indebtedness and asserts (R. 41) that there is due it as of December 31, 1931, on account of interest, $524,276.43, and that "interest on the principal sums is continuing and *will continue until paid.*" By such petition the relator seeks to compel the Secretary to pay it the interest which it (R. 43)—

> is obligated to pay for money borrowed, to calculate such interest on such obligations incurred prior to November 12, 1918, according to the terms and tenor of obligations to the date that payment therefor is made * * *.

Apparently relator's contention is that it is entitled to interest on all its present and outstanding interest-bearing obligations (incurred between the

dates and for the purposes specified in the statute) until, if ever, such obligations are paid by it.[8]

This contention is wholly unfounded, even if the statute permits the allowance of interest after March 2, 1919. In plain and unambiguous language this Court made it clear that interest was payable only on (284 U.S. 231, 238)—

> money borrowed and lost in producing and preparing to produce pyrites upon the specified conditions * * *

In other words, relator is entitled to interest on borrowed capital only when such capital was used in the specified manner, which means that the relator is entitled to interest only on such principal

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[8] The Supreme Court of the District took this view of relator's contention. In its opinion it said (R. 76, 77):

"It appears from the facts hereafter discussed that in all probability plaintiff never will be able to pay its entire interest-bearing debt. Its contention in effect is that it is entitled to a permanent annual payment on its unpaid debt.

* * * * *

"It is reasonably apparent from the record that the relator is insolvent, and that it can never hope to pay this $250,000. * * *

"Relator's contention is that it is entitled to collect interest from the United States until it has repaid in full its interest-bearing obligations incurred prior to the cut-off date.

"It is therefore apparent that in addition to its present claim * * * it also asserts the right to collect on its unpaid balance of $250,000 the sum of $20,000 each year in perpetuity."

In its response to the petition for certiorari the relator did not deny that its contention is as above suggested. Neither the "Petition to Enforce Decree" nor the petition for certiorari contains any suggestions as to when, if ever, or how relator will pay its alleged outstanding indebtedness.

amounts, representing borrowed and lost capital, as relator is entitled to under the statute.

Relator's computation of the amount of interest owing to it as of December 31, 1931, appears at R. 41, 70–73. The Court of Appeals did not consider whether this computation was correct, its decision merely being to the effect that the Relief Act did not limit the recovery of interest to that paid or accrued prior to the effective date of the statute (R. 94–98). Apparently no accurate computation of interest beyond March 2, 1919, has been made by the Secretary (R. 84), but it clearly appears on the face of relator's computation and from the Secretary's response to the rule to show cause (R. 49, 51) that the relator's computation is based upon erroneous principles.

The first award to relator was for $223,529.17, and was made on October 25, 1919 (R. 72). On October 5, 1922, a second award of $469,784.62 was made (R. 11–25, 72, 77). On March 14, 1932, an award of $44,451.45 was made (R. 41, 42, 48), this item representing interest on borrowed capital up to March 2, 1919.[9] On December 7, 1932, a further award was made of $1,584.76, for taxes,[10] and on February 23, 1933, a final award of $90,500 was made, this last award being made pursuant to the

[9] This, of course, is the award which was made pursuant to the decision of this Court in 284 U.S. 231, and the award of which relator complains in the present proceeding. (See Appendix B, pp. 33–38, *infra*.)

[10] There is no reference to this small award in the record.

decision of this Court in *Wilbur* v. *United States ex rel. Chestatee Pyrites & Chemical Corporation,* No. 335, October Term, 1932, decided January 16, 1933. (See Appendix C, pp. 38–40, *infra.*) Relator has thus been paid a total of $785,398.55 as principal and $44,451.45 as interest. The relator concedes that it has now been paid *in full* for all principal sums to which it is entitled under the Relief Act, and interest in full up to March 2, 1919. (See Appendix C, pp. 39, 40, *infra.*)

The record does not disclose the amount of the principal sum upon which relator is entitled to interest, i.e., the "money borrowed and lost in producing and preparing to produce pyrites." (284 U.S. 231, 238.)[11] In Exhibit A, attached to the relator's traverse to the Secretary's response to the rule to show cause (R. 65–70), it is asserted (R. 71) that relator's "Total Contract Interest Bearing Liabilities" as of October 25, 1919, the date of the first award, was $860,087.96.[12] It may be true that

[11] Apparently the Secretary must have made a calculation of this figure in connection with the award of interest ($44,451.45) up to March 2, 1919, but the amount thereof does not appear in the record. (See pp. 36–37, *infra.*) The Secretary's response to the rule to show cause contains a statement that (R. 51):

"the awards of $693,313.79 heretofore paid to the respondent, made it possible for the respondent to discharge its interest-bearing obligations in full and in that way to stop the running of interest, * * *."

[12] To this sum approximately $90,000 of miscellaneous items is added in order to reach relator's alleged "Total Indebtedness as at date of First Award," of $948,041.01. (R. 71–72.)

this amount does represent relator's "Total Contract Interest Bearing Liabilities" as of the date mentioned, although there is nothing in the record to support relator's statement, but under the decision of this Court relator is only entitled to interest on its borrowed capital if such capital was "borrowed and lost" in the manner specified. What part of the said sum of $860,087.96 was borrowed and lost under the conditions specified does not appear. That the true amount of the borrowed and lost capital is greatly less than the amount upon which relator claims interest is obvious from the fact that the *entire* amount of *principal* which relator has been allowed (which must be taken to represent the entire amount to which relator was entitled under the statute) is only $785,398.55 (p. 24, *supra*) and this latter sum includes, of course, many items which did not originate from borrowed capital.

We take it as evident without argument that the relator was under a duty to reduce its interest-bearing indebtedness by the application thereto of the awards made to it by the Secretary from time to time.[13] Accordingly, even assuming that the

[13] Instead of applying the payments made by the Secretary to its interest-bearing indebtedness, relator seems to have applied these sums in whole or in part to various legal fees and expenses, expenses of expert witnesses and travel expenses, salaries, brokerage fees, etc. (R. 72–73; see also pp. 36–37, *infra*.) There is clearly no basis in law or equity for such an application of the payments.

The Secretary in his response to the rule to show cause alleged (R. 49):

"that he also ascertained as a matter of fact that instead

entire $785,398.55 of principal paid to it represented capital "borrowed and lost", relator would only be entitled to interest on that amount to October 25, 1919, the date of the first award; to interest on $561,869.38 to October 5, 1922, the date of the second award; to interest on $92,084.76 to December 7, 1932, the date of the third award; and so forth. Assuming *arguendo* that the Government is liable for interest after March 2, 1919, it is obvious that the Government's liability for interest *necessarily* terminated upon the final payment to relator of its principal claim; and according to the response of the Secretary (R. 51) it must have terminated not later than October 5, 1922, the date of the second award, since the first and second awards "made it possible for the respondent [relator] to discharge its interest-bearing obligations in full". (See footnote 11, p. 24, *supra.*)

Because the Court of Appeals dealt only with the general question whether any interest was allowable after March 2, 1919, its opinion does not directly present any issues with respect to the manner of the computation of such interest, if allowable. Nevertheless, such issues are presented by

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of applying the amounts of those awards, so far as was necessary, to the discharge of its interest-bearing obligations which were reflected in the amounts awarded, the relator used the money for various other purposes, and permitted its interest-bearing obligations to remain outstanding and unpaid."

the pleadings, and we have felt constrained to set forth at some length our views with respect to the principles which should govern such issues. Because of the tortuous and prolonged legal proceedings which in the past have attended relator's claim, we think it would be most unfortunate if, after the decision of this Court in the instant proceeding, still other legal proceedings would be necessary before relator's claim might finally be settled.

CONCLUSION

The judgment of the Court of Appeals should be reversed.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.
SETH W. RICHARDSON,
Assistant Attorney General.
PAUL D. MILLER,
Attorney.

APRIL 1933.

APPENDIX A

STATUTES INVOLVED

Extract from the Act of March 2, 1919, known as the War Minerals Relief Act, c. 94, 40 Stat. 1272, 1274:

> SEC. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce, either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war; said minerals being enumerated in the Act of Congress approved October fifth, nineteen hundred and eighteen, entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."
>
> The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; that all pay-

ments and expenses incurred by said Secretary, including personal services, traveling and subsistence expenses, supplies, postage, printing, and all other expenses incident to the proper prosecution of this work, both in the District of Columbia and elsewhere, as the Secretary of the Interior may deem essential and proper, shall be paid from the funds appropriated by the said Act of October fifth, nineteen hundred and eighteen, and that said funds and appropriations shall continue to be available for said purpose until such time as the said Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed: *Provided, however,* That the payments and disbursements made under the provisions of this section for and in connection with the payments and settlements of the claims herein described, and the said expenses of administration shall in no event exceed the sum of $8,500,000: *And provided further,* That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this Act: *And provided further,* That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance: *And provided further,* That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that

moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce either manganese, chrome, pyrites, or tungsten for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary: *And provided further,* That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns of any party.

That a report of all operations under this section, including receipts and disbursements, shall be made to Congress on or before the first Monday in December of each year.

That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States: *Provided further,* That in determining the net losses of any claimant the Secretary of the Interior shall, among other things, take into consideration and charge to the claimant the then market value of any ores or minerals on hand belonging to the claimant, and

also the salvage or usable value of any machinery or other appliances which may be claimed was purchased to equip said mine for the purpose of complying with the request or demand of the agencies of the Government above mentioned in the manner aforesaid.

Act of November 23, 1921, c. 137, 42 Stat. 322:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Act approved March 2, 1919, entitled "An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," be, and the same is hereby, amended as follows:

Add to the first paragraph of section 5 the following proviso: '*Provided,* That all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said Act, in good faith expended money in producing or preparing to produce any of the ores or minerals named therein and have heretofore mailed or filed their claims or notice in writing thereof within the time and in the manner prescribed by said Act, if the proof in support of said claims clearly shows them to be based upon action taken in response to such request, demand, solicitation or appeal, shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation in said Act.

"If in claims passed upon under said Act awards have been denied or made on rulings contrary to the provisions of this amendment, or through miscalculation, the Secre-

tary of the Interior may award proper amounts or additional amounts."

Act of February 13, 1929, c. 182, 45 Stat. 1166:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any claimant who has heretofore filed with the Secretary of the Interior within the time and manner provided by existing law a claim under said Acts generally known as the War Minerals Acts (Fortieth Statutes, page 1272, and its amendments) may within one year from the date of the passage and approval hereof petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said Acts, but the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court.

SEC. 2. In any proceeding brought under the provisions of section 1 of this Act the Secretary of the Interior shall be designated as the defendant or respondent, and upon the filing of the petition the cause shall follow the usual procedure, subject to such rules or orders as the court may make with respect thereto.

SEC. 3. Jurisdiction is hereby conferred upon the Supreme Court of the District of Columbia, as a district court of the United States, to hear and determine all such suits and enter all orders, judgments, and decrees therein, subject to the usual right of appeal by either party to the Court of Appeals of the District of Columbia, whose final judg-

ment may be reviewed by the Supreme Court of the United States by petition for certiorari or by appeal as provided by law and the rules of the court.

SEC. 4. Upon the final disposition of such proceeding, the clerk of the Supreme Court of the District of Columbia shall without delay certify to the Secretary of the Interior the final judgment or decree rendered therein, whereupon the Secretary of the Interior shall proceed with the final adjustment of said claim in accordance with the law as construed by the court in such judgment or decree.

APPENDIX B

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, March 14, 1932.

Reconsidered under decree of the Supreme Court of the District of Columbia

Claim No. 1
War Minerals Relief Act

In re The Chestatee Pyrites & Chemical Co.

This claim is reconsidered only as to interest on borrowed capital pursuant to a writ of mandamus issued by the Supreme Court of the District of Columbia. There are other items in dispute, namely, amount to be allowed on prestimulated plant, purchase of real property, taxes, legal services, and salaries to officers, but all these appear in a suit pending in the court, and their consideration awaits final determination of the litigation. In explanation of the filing of two suits in the

claim it may be said that counsel agreed to a division of items so that a test case as to interest might be carried forward to the Supreme Court of the United States. This claim, therefore, is the one upon which the decision of the highest court as to interest was based.

When the writ of mandamus and the late questionnaire were received by the Commission it was found that the claimant had computed interest not to March 2, 1919, but to December 31, 1931. The interpretation given to the language of the court by the claimant added more than half a million dollars to the amount that was to be considered under the Commission's view of the court decision, and it was decided to ask the Solicitor for an opinion on the legal question involved. The Solicitor held that all interest stopped at March 2, 1919. The Secretary then requested the opinion of the Attorney General on the legal question involved, and that officer still has the matter under consideration.

While awaiting the opinion of the Attorney General, Mr. Geo. A. Pratt, of the claimant company, and Mr. Lee Ashcraft, of Ashcraft-Wilkinson, the latter being the chief creditor of the claimant company, made request that the Secretary award at once, without prejudice, the amount of interest found to be reimbursable to March 2, 1919. They represented that such an award would be of very great assistance in meeting their pressing financial obligations, and they further represented that the award would be applied on the principal, and, therefore, would be a stop on interest to the extent of the award in case it should be held finally

that interest was payable to the date of settlement of the claim.

The Secretary, after considering all phases of the situation, decided that compliance with the request would be the advantage of all concerned and it was ordered that interest be computed to March 2, 1919, having regard to all the provisions and limitations of the act as amended:

Two awards have been made

This claim was the first to be filed under the War Minerals Act, and the amount claimed was $914,172.73. A part of the alleged loss was interest on borrowed capital and accounts, amounting to $40,795.13. Stimulation as of June 18, 1917, was conceded, the commercial importance of the property and other requirements were held to be met, and an award of $223,529.17 was made. Later, after claimant had filed objections to certain disallowances in the award, the claim was reaudited, the auditors for the Government and the principals for the claimants agreeing upon the amount of the expenditures prior to, during, and subsequent to the date of stimulation. As recast, the figures were as follows:

Expenditures prior to stimulation (June 18, 1917)	$149,040.38
Net amount after income deducted	702,713.27
Errors and post-stimulation expense	58,172.04
	909,925.69

The interest item as agreed upon remained at $40,795.13, to November 12, 1918.

In September, 1922, after the filing of many briefs and after hearings, the Secretary made a second award of $469,784.62. In all these considerations and reconsiderations the claim for interest was dis-

allowed, and, progressively, as time passed the claimant contended for additional interest which, it was claimed, was running on the unpaid principal.

The claim as now presented

In the late questionnaire, executed on January 2, 1932, the claimant asks repayment of alleged net losses totaling $666,059.24. This amount includes the items still in litigation in the pending suit already referred to, but, deducting them from the total, the amount of the interest now claimed is $568,727.88. In computing this interest the claimant charged interest at 6 per cent for the first five years, which was the duration of a financing contract, and 8 per cent thereafter on the new promissory notes which were given in the refinancing of the debt. The interest so charged was largely interest on a loan of $695,000 made by Ashcraft-Wilkinson Company, but $50,000 of the amount was loaned prior to stimulation.

In explanation of the fact that only a small part of the $693,313.79, which in the two awards has been paid to claimant, was applied to the reduction of the principal, a distribution of the awards was presented with the questionnaire. The claimant states that, of the first award of $223,529.17, miscellaneous disbursements to Chestatee creditors was made by Ashcraft-Wilkinson in the amount of $182,260.05; that $15,017 was paid for legal services, and $26,252.12 was paid to Geo. L. Pratt for salary, travel, and expenses. Whether Ashcraft-Wilkinson paid the money to themselves as creditors, or to other creditors, is not clear. No part of the first award appears to have been applied on the princi-

pal debt to Ashcraft-Wilkinson, although some of it may have been applied on interest.

Of the second award of $469,784.62, there was paid to Ashcraft-Wilkinson $190,526.63 to apply on the principal, $64,500 as a financing commission, $6,541.78 as a brokerage fee, and $106,149.61 for interest. Of the remainder, $85,165.53 was paid for legal services and $16,901.07 for travel and miscellaneous expenses.

A further statement by the claimant is to the effect that, to date, legal services have cost $144,430.90; expert witnesses, travel, and incidentals, $46,543.71; and general auditing, approximately $32,996.04; a total of $223,970.65.

From the foregoing it appears that of the total of $693,313.79 that has been awarded and paid to the claimant, $190,526.63 has been applied to reduce the principal debt to Ashcraft-Wilkinson, although much more than this has gone to this firm in the way of commissions, fees, and interest.

Interest repayable as of March 2, 1919

Auditors for the Government have in the past month investigated interest payments and interest obligations of this company as well as its strictly operating expenditures. They have prepared a comprehensive report covering the history of operations before, during, and, to an extent, subsequent to stimulation, and this report is made a part of the record in the claim. As to interest, they have traced payments to Ashcraft-Wilkinson and to banks, payments on notes for machinery and on notes for accounts payable. Excluding interest on $50,000 borrowed prior to stimulation, they find that there is due for reimbursement to this claimant

company from the date of stimulation up to and including March 2, 1919, the sum of $44,451.45.

In the above claim, under the War Minerals Relief Act, section 5 of the act of March 2, 1919 (40 Stat. 1274), as amended, upon due consideration of the record, the admissible net loss on interest to March 2, 1919, is found to be $44,451.45.

An award is made in this claim in the sum of $44,451.45.

(Sgd.) RAY LYMAN WILBUR,
Secretary.

JB/or.

APPENDIX C

THE SECRETARY OF THE INTERIOR,
Washington, February 23, 1933.

Chestatee Pyrites & Chemical Corp. (War Minerals Claim No. 1):

In awards heretofore made in this case, certain items included in the claim were disallowed upon the belief that under the applicable law they could not be included or paid. They involved items set up by the Government auditor as a result of his examination of claimants' acts and expenditures, and totalled $149,040.38. A part of this amount was credited to claimant company for materials used in the stimulated operations during the war, and another credit was allowed in the form of rentals for equipment ordered prior to stimulation but utilized in the stimulated operations.

Certain legal questions arose and were carried into the courts for determination under the provisions of the act of 1929, resulting in a decision by the Supreme Court of the United States and a

mandate to the Secretary of the Interior to proceed without delay to a final adjustment of the disputed items in the claim to determine whether any of the items were in fact losses suffered by the claimant and its stockholders by reason of producing or preparing to produce pyrites in compliance with any request or demand and if so, "to determine what allowance therefor shall be just and equitable and to include such allowance, if any, in the final adjustment of said claim."

The entire record has been reviewed and careful consideration given to the claim as now presented and in the light of the conclusion finally reached by the court. This consideration has resulted in the conclusion that a fair, just and equitable settlement will be reached by the allowance to the claimant of the sum of $90,500.00 in full and final settlement of all claims in or arising out of said war minerals claim No. 1, up to March 2, 1919.

Accordingly, I hereby award to the claimant the said sum of $90,500.00, in full, final and equitable adjustment of all claims or demands arising out of or pertaining to said War Minerals Relief Claim No. 1, up to March 2, 1919.

RAY LYMAN WILBUR,
Secretary.

WASHINGTON, D.C., *February 23, 1933.*

Hon. RAY LYMAN WILBUR,
Secretary of the Interior,
Department of the Interior,
Washington, D.C.

DEAR SIR: I am in receipt of your additional award, dated February 23, 1933, to The Chestatee Pyrites and Chemical Corporation, Claim No. 1,

on the War Minerals Relief Commission docket, in the sum of Ninety Thousand Five Hundred Dollars ($90,500.00).

The Chestatee Pyrites and Chemical Corporation hereby accepts this award as payment of its losses in full up to March 2, 1919, as stated in the award.

I would appreciate your prompt certification for payment.

Very truly yours,

THE CHESTATEE PYRITES AND CHEMICAL CORPORATION,

By GEO. L. PRATT,

Vice President and Treasurer.

GLP/or

U. S. GOVERNMENT PRINTING OFFICE: 1[illegible]

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NO. 767

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

HAROLD L. ICKES,
SECRETARY OF THE INTERIOR, Petitioner,

versus

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION, Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI.

BY
EDGAR WATKINS
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EDGAR WATKINS, JR.
Citizens & Southern National Bank Building,
Atlanta, Georgia.

MARION SMITH
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Atlanta, Georgia.
Counsel for Respondent.

March 15, 1933.

11816 STEIN PRINTING CO., ATLANTA, GA.

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NO. .....

IN THE

SUPREME COURT OF THE UNITED STATES

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SECRETARY OF THE INTERIOR, Petitioner,

versus

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION, Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI.

THE SOLE ISSUE HERE PRESENTED.

The only legal question presented by the petition in this case is whether losses for interest on obligations incurre before November 11, 1918 can be compensated where the interest on such obligations accrued after March 2, 1919, or is there a legal cut-off on interest losses even though they arose out of binding contracts to pay interest made before the Armistice?

While this is the sole issue, petitioner does not, in our opinion, adequately advise this Court of the applicable facts necessary to be kept in mind in determining the issue.

THE ISSUE HERE INVOLVED HAS ALREADY BEEN DETERMINED BY THIS COURT.

In *Wilbur v. United States*, *284 U. S. 231, 237, 238*, speaking of "the amount of interest" which constituted an allowable item, this Court used the words "paid or incurred," and "paid on the obligation incurred." The Act of March 2, 1919 which the Court was construing (see Appendix to petition 15 ff.) gives the right to receive an award for "net losses" and such losses mean all net losses not specifically exempt by the statute and it is not contended by petitioner that losses for interest on obligations incurred are specifically excepted from the statute. The legal question here presented was before the Court in rendering its former decision herein and in the course of the opinion therein referring to interest *paid* or *incurred* the Court said such,

> "* * * constitutes a part of relator's expenditures and cost of the undertaking and so is within the terms of the section as amended."

Obviously, respondent "suffered" a loss within the meaning of the Relief Act, as interpreted by this Court, and under the admitted facts when it incurred obligations to pay interest on the money it borrowed and lost.

THE STATUTES.

On October 5, 1918 (40 Stat. 1009, Appendix 1 hereto), the Congress authorized the President to take over certain mining properties including those producing pyrites, the mineral in which respondent is interested, and provided in Section 3 thereof that when the United States had taken over such mines, the Government should make "just compensation." The statute prescribed how just compensation should be determined and in case an agreement could not be reached, authorized a suit to recover on behalf of the owner of the mine. While that Act was pending before the Congress, the Secretary of the Interior and other officers requested

and demanded that mine owners, including respondent here, enlarge their respective enterprises.[1]

Because of the unexpected termination of the War, the Act of October 5, 1918 was not followed but the Congress passed a supplemental Act, that of March 2, 1919, in which the Secretary of the Interior was given power "to adjust,

---

[1]Petitioner's predecessor admitted that claimant, respondent here, "made claim for losses based on payment of interest, and obligations incurred to pay future interest, on borrowed money, used in complying with stimulation;" that it "had paid out money, and obligated itself to pay out money in the future, as interest on money borrowed to prosecute the production of pyrites;" that it "was stimulated by a former Secretary of the Interior to increase its production by enlarging its operations;" that the issue of law was—"Is interest paid and obligations to pay future interest for the use of money a loss?". Petitioner's predecessor found and himself set up his findings here and on a former appeal said:

"The amount of money required to meet the government demands was so great as to make the securing of it by ordinary means almost impossible. The activities of the government to induce Ashcraft and Wilkinson to finance claimant, so that war needs might be met quickly and in large measure, were personal, direct and effective. * * * Secretary Lane who himself had a part not only in the stimulation of claimant but, through suggestion, in the financing, recognized that Ashcraft and Wilkinson had performed a service to the government. * * * the record showed that the then Secretary of the Interior, realizing no doubt that this property presented opportunity for the biggest production of pyrites in the entire country, used every means in his power to persuade the claimant to develope it. It is true that he could not and did not guarantee claimant against loss, but his full influence short of underwriting the project was exerted. Always, too, there was a realization that claimant, in responding to government request, will suffer great financial loss, notwithstanding the generous provisions of the War Minerals Relief Act." (R. 11–24).

liquidate and pay such net losses" as were suffered. In the Act of 1919, the original appropriation of $50,000,000.00 carried in the Act of 1918 was reduced to $8,500,000.00.

Congress being dissatisfied with the "interpretation and application" of the Acts of 1918 and 1919, passed the Act of November 23, 1921. This Act authorized the granting of rehearings by the Secretary and contained the mandatory provision that claimants "shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation of said Act." The Act of February 13, 1929 authorizes this suit. (For Acts of 1919, 1921 and 1929 see Appendix to petition herein).

PETITIONER'S ANSWER BELOW AND THE PETITION HEREIN FAIL ADEQUATELY TO ADVISE THIS COURT OF THE TRUE FACTS.

At page 3 of the petition herein, discussing the opinion of this Court on a former appeal, the petition says:

> "There is nothing in the court's opinion to indicate that it considered the question of claimant's right to recover interest paid or accruing after March 2, 1919."

At page 4 of the petition, a quotation is made from *Work v. United States, 298 Fed. 839.* This quotation omits a material part of the decision that at page 842 where the Court said:

> "Being, therefore, an element of the expenses incurred, we think that in equity and justice the interest paid or *obligated to be paid* in this case should be allowed." (Emphasis supplied)

This opinion in 298 Fed. 839 was followed by the Court of Appeals in *Chestatee v. Wilbur, 47 Fed. (2d) 424* where it was stated:

> "The sole question presented is whether interest paid or *agreed to be paid* by the relator on borrowed money expended in producing or preparing to produce pyrites constitutes a loss which, by the terms of that Act, the Secretary should recognize and pay."

At other places in the petition statements are made to the effect that the issue here has not heretofore been specifically dealt with. These contentions and the fact that petitioner relies upon the findings of the trial judge in this case, make it necessary for respondent to present adequately and truthfully facts of record not disclosed in the petition herein.

Petitioner's answer in the trial court not only was not "prepared with purpose to disclose to the Court all relevant facts and circumstances," but was shown of record to be untrue. The petition here fails "adequately to advise (this Court) concerning the real situation."

That the issue here now presented, which has heretofore been fully considered both by the Department of the Interior and the Courts, may be fairly stated, respondent is under the necessity of stating in detail facts which the Court needs to know in order properly to decide such issue. This history shows, and the fact is, that the specific contention was made that obligations incurred was on the same legal basis as obligations paid, and it also shows that petitioner, prior to this particular proceeding, had never contended that there was any shut-off day.

DEPARTMENTAL AND JUDICIAL HISTORY OF THIS CLAIM.

A. The Departmental History.

Respondent here, on March 5, 1919, filed its claim in the Department of the Interior, seeking an award of net losses (R. 3, admitted R. 27). This was the first claim filed and on June 5, 1919, a small award was made which on August 8, 1919, was increased and on October 15, 1919, further increased (R. 9–11).

Congress, on November 23, 1921, passed an act amending the act of March 2, 1919. Under this amended act, further hearings were had before the Secretary of the Interior and his Assistant Commissioner and that Commissioner, on September 22, 1922, recommended an additional award of $469,784.62 (R. 11–24). This recommendation was adopted (R. 25).

In the opinion of Mr. Briar, the Assistant Commissioner, on which the award was made, he said:

"All interest charges have been deducted"

and he proceeded thence to argue as a legal issue why no interest charges should be paid (R. 13–15).

In December of 1927, the Secretary of the Interior requested an opinion from the Attorney General on two questions, the second of which reads:

> "Second. Are you authorized to adjust, liquidate and pay net losses arising by reason of interest paid, or *payable under obligations to pay*, on money borrowed for use by operators in connection with operations under the law?" (Emphasis supplied.)

The Honorable The Attorney General gave an opinion on March 23, 1928, without expressing definitely his views as to the law; but, because of the consistently-adhered-to policy of the Department of the Interior and of the grave question of one Secretary overruling a predecessor, advised the Department of the Interior not to pay "interest paid or *payable under obligations to pay*" without further legislation (35 Op. A. G. 426, 430, Emphasis Supplied).

Eight days after the decision of this Court, petitioner's counsel prepared a decree, which was somewhat modified by respondent's counsel, (R. 40, decree printed R. 35, 36), in which it was decreed that the petitioner should "forthwith proceed to ascertain the amount of interest that at the time of the passage of the Act of Congress of March 2, 1919, had been paid or *the obligation incurred* by relator (respondent here) for money borrowed and lost * * *" (Emphasis supplied). Upon the service of that decree, petitioner sent out a new questionnaire asking certain questions, among which were questions 23 and 24, the first being a request to state the "amount of your claim for interest actually paid;" the second being "What is the amount of your claim for *interest still to be paid?*" (R. 40, Emphasis supplied).

Thereafter, the Department of the Interior asked for opinions from its Solicitor, whose opinion is dated February 3, 1932

(R. 52), and from the Attorney General, whose opinion is dated April 2, 1932 (R. 57).

On March 16, 1932, the Secretary made another award to respondent in the sum of $44,451.45 for interest *accrued* to March 2, 1919, this being without "prejudice" (R. 85). This ends the activities of the petitioner in this case except as to the answer filed herein on April 27, 1932, and which will be discussed under the Judicial History (R. 45 ff.), as will also be the testimony of the Assistant Secretary (R. 82 ff.)

B. The Judicial History.

After the Act of 1921 and after further awards had been made to respondent and others, respondent sought a determination of the question here involved and in 1923 filed a suit in the Supreme Court of the District of Columbia seeking a writ of mandamus under allegations similar to those in this case. In that case, the Supreme Court of the District, on January 9, 1924, held that the writ should be granted and cited in support of its opinion *Seaboard Air Line R. Co. v. United States, 261 U. S. 299* and *United States v. State of New York, 160 U. S. 598.*

After the decision of the Supreme Court of the District which was affirmed by the Court of Appeals of the District, Congress on June 7, 1924, while those decisions remained unreversed, passed the act of that date restoring the appropriation of $50,000,000.00. This case finally reached this Court and it was held that as the law then stood, the Secretary of the Interior had an uncontrolled discretion and the case was ordered dismissed for lack of jurisdiction. The Supreme Court, in dicta and without giving consideration to the act of October 5, 1918, referred to "a gratuity" (*Work v. Chestatee Co., 267 U. S. 185*).

After this decision of the Supreme Court, Congress specifically granted jurisdiction to the courts (Act of February 13, 1929. For a history of the legislation see Appendix to brief for respondent in *Docket No. 67, October Term 1931, Wilbur v. U. S. ex rel. Chestatee Pyrites & Chemical Corporation,* later reported in 284 U. S. 237).

Congress having recognized respondent's rights, by this act removed any argument of a gratuity and specifically authorized the courts to grant relief for errors of law. Following that statute, this suit was filed on the 18th of February, 1929, in which it was alleged that respondent "claimed interest paid by it and due to be paid by it" (R. 3); that other amounts of interest "have since accrued and are yet accruing" (R. 4); that it was obligated "to pay further interest" (R. 5); and it prayed that the court direct the Secretary to make an award for what is "due for interest paid on borrowed money and for obligations to pay interest thereon" (R. 6).

In answer to this petition, petitioner set up the findings of his Assistant Commissioner hereinbefore referred to, admitted that respondent had paid interest and obligated itself to pay money in the future (R. 28); said that one of the questions of law was:

> "(1) Is interest paid and *obligations to pay future interest* for the use of money a loss?" (R. 30, Emphasis supplied);

denied that respondent had suffered loss because of having paid interest and obligated itself to pay other interest.

This case was thereafter heard, appealed to the Court of Appeals and reached this Court where it was held (*284 U. S. 237*) that respondent was entitled to a writ of mandamus. Petitioner's counsel then drew a decree which was entered on December 15, 1931 (R. 35, 40), and after that decree had been entered, petitioner having failed to comply fully therewith, this petition was brought to enforce the decree. The word "decree" was used in the record although the case is not an equity case but because the Act of February 13, 1929, makes "decree" and "judgment" synonymous.

In the petition to enforce the decree (R. 36 ff.), the history of the litigation is in part pleaded and it there definitely appears that respondent claimed not only interest that it had paid but interest that it was to pay in the future; that this claim was recognized and indeed, that petitioner, in seeking the former writ of certiorari, had, as one of the grounds to show public interest, stated to this Court:

"The amount claimed for interest would be increased and possibly more than doubled if computed to the date of settlement of the claim" (petition for writ of certiorari in the former case, p. 11).

The record in this case (pp. 37–40 inclusive) shows definitely that the issue included: (a) interest paid; and (b) future interest obligated to be paid. So definitely does this issue appear that the learned Attorney General with colloquial forcefulness said in his opinion that "it stuck out like a sore thumb" (R. 61).

Respondent's counsel did not then believe and do not now believe that there is any difference in the legal obligation as to the interest paid and the obligations to pay further interest. Apparently petitioner's counsel agreed with respondent's contention and the issue was treated as one and not as two. Either petitioner's counsel then saw no legal distinction between interest paid and interest to be paid or he failed adequately to inform the court of his contentions. No one argued that there was any difference in law as to the subdivisions. The sole argument made by the petitioner at that time and at all times prior to the filing of his answer herein, was that no interest paid or obligated to be paid could be recovered. The argument of respondent's counsel was that all interest, that paid and that obligated to be paid, could be recovered. The word "obligations" is in the statute and was used in the opinion of this Court, in the decree of the lower court of December 15, 1932, and throughout the pleadings. The Secretary seemed to agree with his counsel and with the approval of his counsel sought to obtain information both as to interest paid and as to interest still to be paid (R. 40).

The Solicitor of the Department of the Interior and the Attorney General, by their respective opinions (R. 52–65), concluded that interest to be paid must stop on March 2, 1919. These learned attorneys arrived at their conclusions by different roads but each advised petitioner that no interest for obligations incurred during the war period and not *accrued* on or before March 2, 1919, could be paid.

In a disingenuous effort to avoid the legal issue, and on April 27, 1932 (R. 45 ff.) petitioner filed an answer setting up

arguments and claiming that the legal issue here presented was not a legal but a fact issue. That answer was immediately traversed and to establish the truth of the traverse, the Assistant Secretary who had signed the answer (R. 52) was placed upon the stand by respondent and categorically denied all the substantial allegations of the answer (R. 82–85). The answer claimed that consideration had been given to all interest due regardless of any cut-off. The witness testified: "I did not consider any interest beyond March 2, 1919" (R. 83); and further, the witness said that he had dealt with the question solely as a matter of law, made a payment without prejudice and while awaiting the decision of the Attorney General (R. 84, 85).

The answer had claimed that the Secretary was never served with the writ of mandamus under the decree of December 15, 1931. The witness testified: "On December 15, 1931, the Secretary received the decree of the court and proceeded to carry out its mandate" (R. 85). Further, a leading attorney of the District of Columbia, Mr. Josephus C. Trimble, testified that the Solicitor of the Department of the Interior had said: "The Department would act upon a certified copy of the decree and that it was unnecessary for the plaintiff to go to the expense of securing and serving a formal writ of mandamus" (R. 86). The Secretary himself wrote the President of the Senate:

> "On December 15, 1931, the Secretary received *the decree of the court* and proceeded to carry out its mandate" (R. 85, Emphasis supplied).

The Court of Appeals in this case disregarded this amended plea and no doubt the learned Solicitor General was embarrassed thereby and so there is now presented to this Court the one question of law which is whether or not there is a cut-off as of March 2, 1919, of all obligations to pay interest.

This Court in a related case (*Wilbur v. United States, decided December 6, 1932, 77 L.ed., Adv. Op. 379*) had before it a similar record to the one here and said of petitioner's answers there:

> "* it seems proper to add that if these answers had been more carefully prepared, with purpose to disclose to the Court all relevant facts and circumstances, unnecessary difficulties would have been avoided."

Reference was there made to the petition for certiorari by saying:

> "The petition here for certiorari does not mention the conflicting view in respect of the Exhibits or deal with them as parts of the record. It failed adequately to advise us concerning the real situation."

The decision of this Court and the decree of the trial court were disregarded by petitioner.

In *Wilbur v. United States, 284 U. S. 237*, this Court, as stated above, decided that interest paid and obligations to pay interest was an allowable item. The mandate of this Court was followed by the Supreme Court of the District ordering the Secretary "forthwith to proceed to ascertain the amount of interest that, at the time of the passage of the act of Congress of March 2, 1919, Chapter 94, had been paid or the obligation incurred."

The Secretary complied with this order to the extent only that interest had been "paid" before March 2, 1919, wholly refusing to pay the interest for which "obligations" had been incurred. Petition was then filed to enforce the decree or judgment entered in accordance with the mandate of this Court. The trial court in this petition erroneously followed the response of petitioner notwithstanding such response was disproved by the officer who signed it. On appeal, to the Court of Appeals, as here, the disproved pleadings of the Secretary were abandoned by his counsel and following the decision of this Court the legal issue was decided in respondent's favor.

THE TRIAL COURT'S OPINION.

Petitioner refers to the opinion of the trial judge who seemed to think, misled probably by the untruthful answer of the Department of the Interior, that the case of *West v. Hitchcock, 205 U. S. 80*, was applicable. That case has no application. The rule here applicable is that stated in *Ex Parte Newman, 14 Wall. 152, 156* and *United States v. Fisher, 222 U. S. 204*. The trial court could not accept an answer by way of avoidance when the allegations in the answer were testified to be untrue by the officer who signed such answer.

ARGUMENT.

This Court, when this case was here the second time (*284 U. S. 231, 237*), cited and relied upon the Act of October 5, 1918 which authorizes a recovery by respondent here of just compensation for its losses and said:

> "The amount of interest that at the time of the passage of the Relief Act March 2, 1919, had been paid or incurred by relator for money borrowed and lost in producing and preparing to produce pyrites upon the specified conditions is to be taken into account in determining the amount of its net loss as of that date. It constitutes a part of relator's expenditures and cost of the undertaking and so is within the terms of the section as amended. *United States v. New Uork, 160 U. S. 598, 621–624.*"

Seemingly the use of the date March 2, 1919 in the above quotation is the basis of the argument of petitioner here. It is argued on behalf of the Department of the Interior that by the use of this date this Court intended to limit obligations *incurred* to those that had *accrued* on or before March 2, 1919. The Act of 1919 does not limit the right to recover to the losses that had actually been paid but included losses that might thereafter be paid on obligations incurred prior to November 11th and when this Court, in the quotation above, used the words "specified conditions" in referring to the Act of March 2, 1919, it merely wrote into the opinion the conditions of that Act and did not, of course, extend the time in which obligations could be incurred to March 2, 1919, nor did it limit to that date the time that obligations incurred might accrue. There is nothing in the decision of this Court that prevents a recovery of obligations incurred within the specified conditions of the statute.

The date the interest losses *accrued* is immaterial so long as the losses are the *result* of *obligations incurred* during the stimulation period.

In the opinion of this Court and following the quotation above, there is set out some of the "specified conditions" which must exist before interest paid or obligations incurred to pay interest are allowable items. These conditions, this record shows, were fully met by respondent.

The particular obligations incurred in this case and which obligations bore interest and which obligations were not all due March 2, 1919, were obligations incurred under the direct stimulation and influence of the Secretary of the Interior. So the particular obligations on which the interest here sought to be recovered arose, meet every condition stated by this Court on the second appeal of this case.

Petitioner refers to the statement that when the Government undertook to make just compensation through the terms of the Act of March 2, 1919, it was granting a gratuity. It is true that there was an obiter dictum when the question first reached this Court in which the word "gratuity" is used, but at that time the Court did not consider the Act of October 5, 1918 as it did on the second appeal, nor had the Act of February 13, 1929 been passed. This Court did, when holding that interest paid and obligations to pay interest were allowable items (*284 U. S. 237*), cite *United States v. New York*, in which case this Court said:

> "It would be a reflection upon the patriotic motives of Congress if we did not place a liberal interpretation upon those Acts, and give effect to what, we are not permitted to doubt, was intended by their passage."

It was also there said:

> "Liberally interpreted, it is clear that the Acts * * * created on the part of the United States an obligation to indemnify the states of any costs, charges, and expenses properly *incurred* for the purposes expressed in the Act of 1861, the title of which shows that its object was 'to indemnify the states for expenses *incurred* by them in defense of the United States.'"[2] (Emphasis supplied).

---

[2]Cases showing respondent's right to "just compensation" and a "liberal interpretation" of these statutes are: United States v. New York, 160 U. S. 598; Stewart v. Kahn, 78 U. S. 11 Wall. 493, 504; Monongahela Navigation Company v. United States, 148 U. S. 312, 326; and Seaboard Air Line Ry. Co. v. United States, 261 U. S. 299.

The argument used in the petition that "suffered" means that obligations incurred must have already accrued on the 2nd of March 1919 would utterly destroy any meaning of the words "obligations incurred" because the meaning which petitioner seeks to apply to the Act of 1919 would be sufficiently covered by the word "paid."

SUMMARY AND CONCLUSION.

Respondent for more than a decade has contended that interest paid and obligations to pay further interest constitute an allowable item of losses. Petitioner took issue with that contention but at no time claimed that the issue was not the same whether the interest was paid or obligated to be paid. As one of the facts not then of record but relied on by petitioner in his former application to this Court for the writ of certiorari it was said that the *obligations to pay* would greatly increase the amount involved. When the decree now sought to be enforced was agreed on, petitioner readily consented that interest obligations should be stated in the same sentence as interest paid. Thus the issue was tendered by respondent, accepted by petitioner and adjudicated by all the courts through which this proceeding dragged. This we believe was the only logical and fair course for respondent, but having relied on that issue, having litigated it for years, it cannot now be said that it is either logical or fair to claim that the law differentiates between obligations "paid" and obligations "incurred" which are to be paid. Those obligations paid and those unpaid were "incurred" to a large extent in the same contract. Why use "obligations" in the statute? If petitioner were right that only what was "paid" up to March 2, 1919 is included, the word "paid" alone would have met the situation and "*obligations incurred*" was mere surplusage. But the canons of construction do not permit the striking of the words from the legislative mandate.

The statute does not, petitioner did not, and logically and fairly cannot claim that "obligations incurred" can be otherwise limited than by the particular obligation that was incurred. When and only when net losses resulting from such obligations have been equitably adjusted and paid will the petitioner have complied with the statute, the decision of

this Court and the decree of the trial court. These petitioner has refused to obey and without further delay respondent is entitled to an appropriate writ compelling such obedience.

Respectfully submitted,

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APPENDIX.

Act October 5, 1918.

"An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."

The Essential Substance of the Act.

The Act is printed 40 Stat. 1009, and following. In Section 1 thereof it is stated:

> "By reason of the existence of a state of war, it is essential to the national security and defense, and to the successful prosecution of the war, and for the support and maintenance of the Army and Navy, to provide for an adequate and increased supply, to facilitate the production, and to provide for an equitable, economical, and better distribution of the following-named mineral substances and ores, minerals, intermediate metallurgical products, metals, alloys, and chemical compounds thereof, to-wit: * * * pyrites * * * as the President may, from time to time, determine to be necessary for the purposes aforesaid, and as to which there is at the time of such determination, a present or prospective inadequacy of supply. The aforesaid substances mentioned in any such determination are hereinafter referred to as necessaries."

Section 2 authorized the President to purchase such necessaries and to enter into contracts for the production thereof. The section further makes certain provisions for the cost price, which shall be at a price not "less than the purchase or cost of production thereof."

Section 3 authorized the President to take over mines producing the named minerals, and provided:

> "The United States shall make just compensation, determined by the President, for the taking over, use, occupation or operation by the Government of any such necessaries or any such land, deposit, mine, smelter, or plant, or part thereof."

This section also provided that if the just compensation to which the owner was entitled could not be agreed upon with the President, suit therefor or for a part thereof was authorized.

Sections 4 and 5 relate to administrative matters not material here.

Section 6 appropriates the sum of $50,000,000 to "be used as revolving fund for carrying out the objects of this Act, and for the purpose of making all payments and disbursements, including *just compensation* under section three."

Sections 7, 8 and 9 refer to administrative acts and are not material here.

Section 10 provides for a determination of the operative force of the Act, which was upon the proclamation of peace by the President.

Sections 11 and 12 are not material to the issue here.

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NO. 767

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

HAROLD L. ICKES, SECRETARY OF THE INTERIOR, Petitioner,

versus

UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION, Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENT.

BY

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ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENT.

THE OPINIONS BELOW AND JURISDICTION.

Petitioner correctly cites the opinions below and jurisdiction exists.

QUESTION PRESENTED.

Petitioner states the question here presented is the construction of the opinion of this Court and of the decree of the Supreme Court of the District although he also discusses the meaning of the statutes. Perhaps this is a proper limitation. The record definitely shows that the issue here was heretofore presented to this Court and construing the opinion of this Court and the decree of the Supreme Court of the District in the light of the issues involved it is respondent's contention that the issue now presented has already been

decided by this Court and adjudicated by the trial court. However, as respondent sees no difference between that decree and the opinion of this Court and the statutes, we shall discuss the issue in the light of the statutes.

THE SOLE ISSUE HERE PRESENTED.

The legal question here presented stated disjunctively is whether losses for interest on obligations incurred before November 11, 1918, can be compensated where the interest on such obligations accrued after March 2, 1919, or is there a legal cut-off on interest losses even though they arose out of binding contracts to pay interest made before the Armistice?

THE STATUTES INVOLVED.

Petitioner correctly sets out some of the statutes applicable to the issue here again presented. However, other statutes are involved. The Act of October 5, 1918, is not referred to by petitioner although it was considered by this Court in *Wilbur v. United States*, *284 U. S. 231, 237*, as being material to the issue presented. That act is 40 Stat. 1009 and the pertinent provisions are quoted in Appendix A hereto. The Act of 1918 provided for "just compensation" and was supplemented, not repealed, by the Act of March 2, 1919.

In view of some of the argument made by petitioner herein, the Act of June 7, 1924, is material and a copy of that act is shown as Appendix B hereto.

SUMMARY OF THIS REPLY BRIEF.

Petitioner, beginning at page 9 of his brief, summarizes his argument by stating three contentions. The first of these is the contention that the petitioner "has found as a matter of fact that relator is not entitled in justice and equity to any further allowance for interest." There is no basis of fact upon which to found this argument and in the statement of the errors and inadequacies of petitioner hereinafter, we are giving fully the facts.

The second contention of petitioner shown at page 10 of his brief involves a construction of the statute, the decision of this

Court and the decree of the trial court. Hereinafter we shall seek to show that this Court has already decided the question in favor of respondent and even if the particular question here involved had not been decided, the statute with which this Court's opinion agrees, requires an allowance for obligations incurred as well as an allowance for expenditures paid.

The third contention urged by petitioner beginning at the bottom of page 10 of his brief, presents a question of accounting not here involved but left under the statute for the consideration of the Secretary of the Interior. We shall discuss this question of accounting insofar only as is necessary to show that the question is one for the Secretary and that it is a question upon which he has already acted in favor of respondent.

The accounting method set up by the Department for determining the respondent's losses, due to its yielding to Government stimulation, is shown by Exhibit "D" to the original answer (R. 11 ff.) In this exhibit the Assistant War Minerals Commissioner deals with the whole problem and his findings have been consistently adhered to by the then Secretary of the Interior and his successors. This method of accounting was:

It recognized that the respondent corporation was brought into existence solely to comply with the Government's insistence that these war minerals be produced. All of its operations up to the Armistice were for this purpose alone, and its operations since the Armistice were merely an effort to liquidate the enterprise. Hence all of the expenditures of the corporation during its life were stimulated expenditures. Its interest bearing loans were stimulated, being expressly negotiated by the personal representative of the Secretary of the Interior. (R. 17).

The Department therefore treated all expenditures for this purpose and then deducted from the total all receipts and salvage. It, however, did not allow the full amount of the difference, not because it questioned the fact that the difference was a total loss to the claimant, but because the Department conceived that as a matter of law some of these losses could

not be allowed. These legal contentions have since been denied by the courts and the deducted items reinstated.

There now remains only the question of interest accruing after March 2, 1919, on obligations incurred before that date and within the stimulation period.

The fact that the Department disallowed various items which it found to be losses explains the statement made in conclusion by the Assistant War Minerals Commissioner (R. 24), "that claimant, in responding to Government request, will suffer great financial loss notwithstanding the generous provisions of the War Minerals Relief Act."

During all the delay (called in petitioner's brief 27, tortuous and prolonged) that incurred in securing by claimant the amounts which it is now established were its actual losses in responding to Government stimulation, interest was, of course, continuing on the obligations of the claimant.

The present method of accounting from which Exhibit "C" to this brief resulted is to credit all payments which have been made to the claimant against the total of its losses, crediting the same first against interest and then against principal and accruing interest only on the unpaid balances. It is difficult to see how there could be any serious question as to the correctness of this method of accounting; but if there were, that question is for determination by petitioner and Courts are not empowered to determine the method of accounting at this time. The issue here is whether the Secretary has acted correctly as a matter of law in establishing an ironclad cut-off as of March 2, 1919.

Practically all of respondent's losses grew out of loans for which the Government had induced it to incur obligations. These loans generally did not mature until long after March 2, 1919, and for the reasons definitely shown of record when they matured claimant was not and has never been in a position to pay them in full. Claimant's contracts to pay loans with interest constitute, as stated, the major portion of its losses. The principal of these notes was no more payable March 2, 1919, than was the interest then payable. Petitioner herein recognizes, as he is obliged now to recognize, that the loss in-

volved in the principal of these notes is a loss for which compensation is to be made, but the interest which was contracted for by the same instrument, payable at the same time, and which, together with the principal, constituted the aggregate obligations incurred, is according to petitioner to be separated and placed in a different category and no compensation paid for its loss.

The distinction is artificial and unreasonable. The "obligations incurred," for which the statute provided compensation, include the obligation to pay interest as well as the obligation to pay principal, both resulting from the same obligations. Each dollar's loss on one is just as much a loss to the claimant as a dollar lost on the other. The attempted distinction is not only without basis in the language of the act, but is founded on an unrealistic view of the situation and a disregard of the purpose which the statute was intended to fulfill.

PETITIONER'S BRIEF FAILS ACCURATELY OR ADEQUATELY TO STATE THE FACTS.

It would unduly lengthen this brief were respondent to discuss each error of statement and each failure to make a full statement. This brief therefore will be limited to the larger errors in these respects.

Throughout the brief of petitioner, there is the claim that respondent's right to recover interest paid or accruing after March 2, 1919, was not heretofore considered by the courts.

The first opinion rendered in this case was by the Supreme Court of the District of Columbia on July 27, 1923. In that case, subsequently appealed to this Court and reported as *Work v. Chestatee Pyrites & Chemical Corporation*, 267 *U. S. 185*, this respondent sought to obtain a writ of mandamus to compel the Secretary of the Interior to consider losses "from the expenditures made of interest in the amount of $40,795.13" and for "obligations incurred to pay interest" (see paragraph 11 and prayer in the case named). In that case, as shown in the transcript of the record therein, the trial judge, on January 9, 1924, sustained a demurrer to the answer

of petitioner's predecessor, Mr. Secretary Work, and granted the petition for the writ of mandamus. In the trial court's opinion in that case, the companion case just decided by that court was cited, as well as *Seaboard Air Line Rd. Co. v. United States*, *261 U. S. 299* and *United States v. New York*, *160 U. S. 598*. On appeal of that case to the Court of Appeals (see *Work v. United States*, *298 Fed. 839*), that court, at page 842, said:

> "Being, therefore, an element of the expenses incurred, we think that in equity and justice the interest paid or *obligated to be paid* in this case should be allowed." (Emphasis supplied.)

This opinion in 298 Fed. 839 was followed by the Court of Appeals in *Chestatee v. Wilbur*, *47 Fed. (2d) 424*, where it was stated:

> "The sole question presented is whether interest paid or *agreed to be paid* by the relator on borrowed money expended in producing or preparing to produce pyrites constitutes a loss which, by the terms of that Act, the Secretary should recognize and pay."

The latter decision was affirmed by this Court and in rendering its decision, *284 U. S. 231*, *237*, *238*, referring to interest *paid* or *incurred*, it said that such interest

> "* * * constitutes a part of relator's expenditures and cost of the undertaking and so is within the terms of the section as amended."

Further to demonstrate respondent's contention that this question has already been decided by this Court in favor of respondent, we deem it necessary briefly to set out certain history material to a full understanding of the situation.

DEPARTMENTAL AND JUDICIAL HISTORY OF THIS CLAIM.

A. The Departmental History.

Respondent here, on March 5, 1919, filed its claim in the Department of the Interior, seeking an award of net losses (R. 3, admitted R. 27). This was the first claim filed and on June 5, 1919, a small award was made which on August 8, 1919, was increased and on October 15, 1919, further increased (R. 9–11).

Congress, on November 23, 1921, passed an Act amending the act of March 2, 1919. Under this amended act, further hearings were had before the Secretary of the Interior and his Assistant Commissioner and that Commissioner, on September 22, 1892, recommended an additional award of $469,784.62 (R. 11–24). This recommendation was adopted (R. 25).

In the opinion of Mr. Briar, the Assistant Commissioner, on which the award was made, he said:

> "All interest charges have been deducted"

and he proceeded thence to argue as a legal issue why no interest charges should be paid (R. 13–15).

In December of 1927, the Secretary of the Interior requested an opinion from the Attorney General on two questions, the second of which in the language of the Attorney General reads:

> "Second. Are you authorized to adjust, liquidate and pay net losses arising by reason of interest paid, or *payable under obligations to pay*, on money borrowed for use by operators in connection with operations under the law?" (Emphasis supplied.)

The Honorable The Attorney General gave an opinion on March 23, 1928, without expressing definitely his views as

to the law; but, because of the consistently-adhered-to policy of the Department of the Interior and of the grave question of one Secretary overruling a predecessor, advised the Department of the Interior not to pay "interest paid or *payable under obligations to pay*" without further legislation (35 Op. A. G. 426, 430, Emphasis supplied.)

Eight days after the decision of this Court, petitioner's counsel prepared a decree, which was somewhat modified by respondent's counsel (R. 40, decree printed R. 35, 36), in which it was decreed that the petitioner should "forthwith proceed to ascertain the amount of interest that at the time of the passage of the Act of Congress of March 2, 1919, had been paid or *the obligation incurred* by relator (respondent here) for money borrowed and lost * * * " (Emphasis supplied). Upon the service of that decree, petitioner sent out a new questionnaire asking certain questions, among which were questions 23 and 24, the first being a request to state the "amount of your claim for interest actually paid;" the second being "What is the amount of your claim for *interest still to be paid?*" (R. 40, Emphasis supplied.)

Thereafter, the Department of the Interior asked for opinions from its Solicitor, whose opinion is dated February 3, 1932 (R. 52), and from the Attorney General, whose opinion is dated April 2, 1932 (R. 57).

On March 16, 1932, the Secretary made another award to respondent in the sum of $44,451.45 for interest *accrued* to March 2, 1919, this being without "prejudice" (R. 85). This ends the activities of the petitioner in this case except as to the answer filed herein on April 27, 1932, and which will be discussed under the Judicial History (R. 45 ff.), as will also be the testimony of the AssistantSecretary (R. 82 ff.)

B. The Judicial History.

After the Act of 1921 and after further awards had been made to respondent and others, respondent sought a determination of the question here involved and in 1923 filed a suit in the Supreme Court of the District of Columbia seeking a writ of mandamus under allegations similar to those in this

case. In that case, the Supreme Court of the District, on January 9, 1924, held that the writ should be granted and cited in support of its opinion *Seaboard Air Line R. Co. v. United States, 261 U. S. 299* and *United States v. State of New York, 160 U. S. 598.*

After the decision of the Supreme Court of the District which was affirmed by the Court of Appeals of the District, Congress on June 7, 1924 (Appendix B hereto), while those decisions remained unreversed, restored the appropriation of $50,000,000.00. This case finally reached this Court and it was held that as the law then stood, the Secretary of the Interior had an uncontrolled discretion and the case was ordered dismissed for lack of jurisdiction. The Supreme Court, in dicta and where consideration of the act of October 5, 1918, was unnecessary, referred to "a gratuity" (*Work v. Chestatee Co., 267 U. S. 185*).

After this decision of the Supreme Court, Congress evidenced its determination to protect claimants in their right to "just compensation" by specifically granting jurisdiction to the courts (Act of February 13, 1929. For a history of the legislation see Appendix to brief for respondent in *Docket No. 67, October Term 1931, Wilbur v. U. S. ex rel. Chestatee Pyrites & Chemical Corporation*, reported in *284 U. S. 237*).

Congress having recognized respondent's rights, by this act removed any argument of a gratuity and specifically authorized the courts to grant relief for errors of law. Following that statute, and on the 18th of February, 1929, this suit was filed, in which it was alleged that respondent "claimed interest paid by it and due to be paid by it" (R. 3); that other amounts of interest "have since accrued and are yet accruing" (R. 4); that it was obligated "to pay further interest" (R. 5); and it prayed that the court direct the Secretary to make an award for what is "due for interest paid on borrowed money and for obligations to pay interest thereon" (R. 6).

In answer to this petition, petitioner set up the findings of his Assistant Commissioner hereinbefore referred to, admitted that respondent had paid interest and obligated itself to pay money in the future (R. 28); said that one of the questions of law was:

"(1) Is interest paid and *obligations to pay future interest* for the use of money a loss?" (R. 30, Emphasis supplied);

denied that respondent had suffered loss because of having paid interest and obligated itself to pay other interest.

This case was thereafter heard, appealed to the Court of Appeals and reached this Court where it was held (*284 U. S. 237*) that respondent was entitled to a writ of mandamus. Petitioner's counsel then drew a decree which was entered on December 15, 1931 (R. 35, 40), and after that decree had been entered, petitioner having failed to comply fully therewith, this petition was brought to enforce the decree. The word "decree" was used in the record, although the case is not an equity case, because the Act of February 13, 1929, makes "decree" and "judgment" synonymous.

In the petition to enforce the decree (R. 36 ff.), the history of the litigation is in part pleaded and it there definitely appears that respondent claimed not only interest that it had paid but interest that it was to pay in the future; that this claim was recognized and indeed, that petitioner, in seeking the former writ of certiorari, had, as one of the grounds to show public interest, stated to this Court:

> "The amount claimed for interest would be increased and possibly more than doubled if computed to the date of settlement of the claim" (petition for writ of certiorari in the former appeal, p. 11).

The record here (pp. 37–40 inclusive) shows definitely that the issue included: (a) interest paid; and (b) future interest obligated to be paid. The issue was so prominent and so painfully evident that the learned Attorney General who in one place in his opinion said it was "lurking in the record" but with colloquial forcefulness and more frankness said elsewhere in his opinion that "it stuck out like a sore thumb" (R. 61). Notwithstanding his awareness of the issue, no claim was made that there was any division of the issue.

Respondent's counsel did not then believe and do not now believe that there is any difference in the legal obligation as to the interest paid and the obligations to pay further interest.

Apparently petitioner's counsel agreed with respondent's contention and the issue was treated as one and not as two. Either petitioner's counsel then saw no legal distinction between interest paid and interest to be paid or he failed adequately to inform the court of his contentions. No one argued that there was any difference in law as to the subdivisions. The sole argument made by the petitioner at that time and at all times prior to the filing of his answer herein, was that no interest paid or obligated to be paid could be recovered. The argument of respondent's counsel was that all interest, that paid and that obligated to be paid, could be recovered. The word "obligations" is in the statute and was used in the opinion of this Court, in the decree of the lower court of December 15, 1931, and throughout the pleadings. The Secretary seemed to agree with his counsel and with the approval of his counsel sought to obtain information both as to interest paid and as to interest still to be paid (R. 40).

ERRORS AND INADEQUACIES IN PETITIONER'S BRIEF HEREIN.

Petitioner, page 4 of his brief, admits that respondent, in its petition herein, presented the issue of "interest paid on borrowed money and obligations incurred to pay interest thereon" and further admits that the Court of Appeals in the former appeal of this case, said: "Interest paid or obligated to be paid in this case should be allowed" (see petitioner's brief herein, p. 5). Petitioner follows these admissions with the statement (see his brief, p. 5).

> "Nothing in the briefs of either party filed in this Court specifically raised or called to the attention of this Court the question whether interest paid and accruing after March 2, 1919, was allowable."

It is submitted that while the argument does not occur in a brief, that the statement in the petition for certiorari in the former appeal in this case and respondent's pleadings, statements of issues and the opinions of the courts, do definitely present the issue which petitioner now claims was not called to the attention of the court. The statement in the application for certiorari in the former appeal herein, *Docket 67*,

October Term 1930, at pages 10 and 11, does show that reliance was had on the fact that interest was continuing to run and the Solicitor quoted from a letter from the Department of the Interior a statement reading:

> "The amount claimed for interest would be increased and possibly more than doubled if computed to date of settlement of the claim."

As already stated, counsel for respondent did not see any difference in law between the two classes of losses, one for interest paid and the other for obligations to pay further interest. When petitioner's counsel presented the fact that interest was continuing to run as a basis for obtaining the writ of certiorari and did not present any differentiation between the two subdivisions of losses, it was unnecessary for counsel for respondent to insist that counsel for petitioner should make an issue of this difference. If there had been any legal distinction between the two items of interest, petitioner's counsel should have so claimed.

Petitioner calls attention to the fact that he waived the issuance of a formal writ of mandamus but seems to think it necessary, notwithstanding that waiver, to claim that a formal writ of mandamus was not issued (see petitioner's brief, p. 6). Petitioner's immediate predecessor admitted the receipt of the decree of the court and his counsel agreed to act upon such decree (see R. 85, 86). See note 3 of petitioner at the bottom of page 6 of his brief is wholly irrelevant and immaterial.

THE ISSUE HERE IS ONE OF LAW.

Beginning at the bottom of page 12 of his brief herein and continuing through the greater part of page 13, petitioner sets up his response in the trial court and relies upon the claim that by making an award, without prejudice, of some forty odd thousand dollars, he had determined as a matter of fact what was just and equitable. While none of the assignments of error seems to us to include this contention and while we are greatly surprised that the contention, in view of the facts, should be made as it has been made, some brief reference to the facts is necessary.

It is true that the immediate predecessor of petitioner here filed a response setting up the language quoted in the petition herein. Respondent had filed a detailed petition setting up the facts. Petitioner (See record beginning at page 45) responded by setting up some arguments and a technical contention about writs of mandamus which had no relation whatever to the issue then pending and without denying any of the allegations of fact in respondent's petition, broadly claimed that he had acted as a matter of fact and decided against petitioner. That claim was not pressed in the Court of Appeals and out of kindness to petitioner's counsel, was not seriously considered in the opinion therein, but was dismissed with the statement:

> "We are not impressed with the contention that the ruling of the Secretary amounted merely to the determination of an issue of fact." (R. 96).

The response, or answer, referred to by petitioner at pages 12 and 13 of his brief, was traversed by respondent. Of course the response does not prove itself, the original petition of respondent was not denied and possibly testimony was unnecessary but respondent deemed it proper that the facts should be presented to the Court and after the Assistant Secretary had signed the response, placed that official on the stand and he categorically denied all the substantial allegations in the response (R. 82–85).

Petitioner here cites the case of *West v. Hitchcock, 205 U. S. 80*, on which he relied in the trial court and the trial judge himself cited that case. The true rule in a case like this is that stated in *United States v. Fisher, 222 U. S. 204, 209* and *Ex parte Newman, 14 Wall. 152, 166.*

In *Ex parte Newman, above*, the Supreme Court, beginning at page 166, discussed the practice with reference to proceedings for mandamus and it is there said in substance, that where the respondent to the rule alleges matters in avoidance of the charge made and where such matters are denied by the relator, they must be proved by the respondent. Here, respondent below, petitioner here, did not specifically deny the allegations of fact of the relator, respondent here, but did take issue on the law and state matters in avoidance which

might be construed as in conflict with the allegations of relator. Not only did petitioner here fail to offer proof of his response below, but that response was definitely disproved.

The answer claimed that consideration had been given to all interest due regardless of any cut-off. The witness testified: "I did not consider any interest beyond March 2, 1919" (R. 83); and further, the witness said that he had dealt with the question solely as a matter of law, made a payment without prejudice and while awaiting the opinion of the Attorney General (R. 84, 85).

The answer in this case was much less carefully prepared than the answer criticised by this Court in its decision of January 16, 1933, in *Wilbur v. United States*, where the answer, as is true here, did not disclose to the court all relevant facts and circumstances. Just how petitioner's counsel, with these facts before them, can use the argument they do use at the bottom of page 13 and top of page 14 of petitioner's brief is difficult to explain.

THE OBLIGATIONS, THE BASES OF THE NET LOSSES SUFFERED, WERE INCURRED UNDER THE INFLUENCE OF THE SECRETARY OF THE INTERIOR.

At page 18 of petitioner's brief herein, he says:

> "But claimants, under the statute, did not undertake their mining operations wholly from patriotic motives. Even when 'stimulated' by Government officials, they did not proceed entirely without hope of profit, and under conditions existing at the time they were warranted in anticipating profits."

This statement probably would not have been made had petitioner's answer "been more carefully prepared with purpose to disclose to the court all relevant facts and circumstances."

When the Congress was investigating the Department of the Interior with reference to respondent's claim and the claims of others, extensive hearings were had in response to H. J. Res. 170. These hearings are designated "Hearings Before The Committee On Mines and Mining, House Of Representatives,

Sixty-Sixth Congress, Second Session." A copy of those hearings was, at the request of the late Chief Justice Taft, filed in the case reported in *267 U. S. 185*. In the course of the hearings, George L. Pratt, Treasurer of respondent, was called upon to testify. His testimony begins at page 17 of the record on that hearing. It there appeared that on May 21, 1917, the Honorable Franklin K. Lane, Secretary of the Interior, wrote a letter to a friend urging him to look into the question of the amount of ore belonging to Chestatee Pyrites & Chemical Corporation (see page 20 and page 21 of those hearings). Mr. Lane had himself testified before Congress and this is copied at page 24 of these hearings. There he described how he had induced his friend to develop mines in the South and he said anybody could do the same thing "provided that the man who develops the small deposit in the United States can be assured that he will *get his money* out of the investment that he puts into the development of these mines." The gentleman to whom Mr. Lane referred and who had developed the mines was Mr. Fuller E. Callaway. After Mr. Lane, on May 21st, had requested Mr. Callaway to investigate respondent's mine, he did so and on June 18, 1917, Mr. George L. Pratt, Treasurer of respondent, at the request of Mr. Callaway, wrote a memorandum of the situation (see pp. 24–27). From this letter it appears that respondent had a small mine, financed to a limited extent and Mr. Pratt said:

> "The owners have not felt justified in development and exploitation of the Chestatee property beyond the extent above outlined even though the present pyrites situation would seem to warrant quick deliveries of heavier tonnages."

He followed this by a statement of the things that were necessary for the Government to do, the fifth of these being:

> "Underwrite in some way the hazard or mining risk which now seems warranted on account of the urgent necessity of heavy tonnage of ore, but which would not seem to be justified under sound conservative business principles in normal times."

It may be that respondent was not "without hope of profit," but it certainly is true that no profit motive induced respondent

to surrender its small, and as the record in petitioner's office shows, profitable enterprise, to embark on a large and dangerous enterprise. Patriotism, not profit, was the moving cause.

The findings of the Department of the Interior in this case, which were placed in the record at the time that Department was "commendably" (See this Court's opinion of January 16, 1933, in *Wilbur v. United States*) cooperating in an effort to present the legal question involved, shows definitely that the excerpt from petitioner's brief quoted above, p. 16 is wholly unjustified. These findings appear at Record, pp. 11–24. There it appears that it was impossible by ordinary means to secure the amount of money required to meet the Government demands; that in this situation, the Government actively induced capitalists with sufficient money to finance respondent to the end that the war needs might be quickly and in large measure met; that these efforts of the Secretary of the Interior were personal, direct and effective; that the Secretary thus became active because he realized that respondent's property presented opportunity for the biggest production of pyrites in the entire country. The Secretary did not and could not guarantee against loss, he did use "his full influence short of underwriting the project" and he did this "always" with a "realization that claimant (respondent), in responding to Government request, will suffer great financial loss."

INTEREST BEYOND MARCH 2, 1919, HAS BEEN CALCULATED BY PETITIONER.

At page 23, petitioner says:

> "Apparently no accurate computation of interest beyond March 2, 1919, has been made by the Secretary."

As petitioner himself sets up letters and findings of his predecessor not of record herein, respondent is justified in using a statement of petitioner's predecessor. Therefore we attach hereto as Appendix "C" a letter from the predecessor of petitioner showing that he has made an accurate computation of interest beyond March 2, 1919.

NO FINAL AWARD HAS BEEN MADE.

At the bottom of page 23 of petitioner's brief, he says:

> "* * * on February 23, 1933, a *final award* of $90,500 was made." (Emphasis supplied).

While this statement is modified by saying that the award was made in pursuance of the decision of this Court of January 16, 1933, the use of the words "final award" is misleading. It was a final award in that case but in order not to misapprehend the exact application of the statement quoted above, the award itself should be looked to. At page 39 of petitioner's brief, the Secretary of the Interior, speaking of this allowance of $90,500.00, specifically says that it was "up to March 2, 1919," and the acceptance of this award shown at page 40 of petitioner's brief, was specifically limited to "March 2, 1919." The Assistant Secretary of the Interior testified:

> "It has been decided that interest ends March 2, 1919, and if we are in error in our law, we will at once make the calculation in accordance with the law." (R. 84).

THE AMOUNT OF THE AWARD DUE RESPONDENT IS FOR DETERMINATION BY THE SECRETARY OF THE INTERIOR.

At page 24 of petitioner's brief he quotes correctly from the respondent's statement of its interest bearing obligations which respondent said totalled $860,087.96. As the amount of the obligations for interest paid is a question of fact for the Secretary and the Secretary has made his findings of fact as shown in Appendix "C" attached hereto, it is not an issue before the Court as to the amount of the award that relator is entitled to. All relator is here asking is that the Secretary award as the undisputed facts require, the amount that is justly due it for obligations incurred to pay interest beyond March 2, 1919. As petitioner's figures are somewhat confusing, it may be necessary to call attention to the fact that had petitioner's predecessor prepared his response to the petition herein to enforce the opinion of this Court and the decree of the Supreme Court of the District "with purpose to disclose to the Court all relevant facts and circumstances," there would

have been presented here no difficulties. However, merely to show that there is a substantial amount due respondent, we call attention to a few figures definitely of record.

In the findings originally made herein, the "auditor for the Government and the auditor for claimant" agreed that there had been expended from June 18, 1917, to November 11, 1918, $784,791.14. This Court held on January 16, 1933, in *Wilbur v. United States, Docket 335*, that expenditures made prior to June 18, 1917, for property purchased thereafter by respondent were allowable items. In accordance with that decision and in the exercise of his discretion, the Secretary made an award of $90,500.00. As shown on page 23 of the record in this case, items outside of the expenditures included in the item of $784,791.14 totalling $114,774.56 were allowed. Adding the item of $784,791.14, the award of $90,500.00 and the losses formerly accepted as allowable of $114,774.56, there is a total of $990,065.70. In this total the only interest item is that interest which was paid prior to March 2, 1919. Crediting the Government as should be done with all payments made and calculating interest as we insist should be done, after crediting these partial payments, there is a large amount of obligations incurred for interest as shown by the findings of the Secretary (Appendix C). Taking the unpaid principal and the interest obligations incurred, it will be seen that justly and equitably and under undisputed facts and figures, respondent is entitled to be paid an additional award but as heretofore said, we see no reason why petitioner should have injected this question of amount into the case and the only reason we answer it is because we want definitely to show that there is a large amount involved and that the Government has not yet paid respondent all its net losses.

In subdivision 3 of petitioner's argument, page 21, he discusses a proposition which seemingly is to the effect that interest should be allowed only for that which is paid or that which was incurred. That is all respondent asks for. The quotation from the trial judge's opinion on page 22 does not correctly represent the full facts and brings up again the proposition that this Court is not considering facts but is only determining the law. The Secretary of the Interior, Appendix C hereto, has found the facts. It is true that com-

plying with a questionnaire sent out by petitioner's predecessor respondent stated how much it had paid by way of attorneys' fees and other expenses. The assumption then was, and we still believe that was the intention of the Secretary of the Interior at that time, that because respondent had had to pay out large sums in expenses and attorneys' fees, that fact should be given consideration in determining what was just and equitable. Unquestionably respondent, when it paid its attorneys' fees and expenses, could not charge those to the Government and unquestionably respondent should credit the Government for all receipts obtained, and whether those receipts were used by respondent to pay obligations or not, they stopped the obligations pro tanto. Respondent never has contended otherwise and as aforesaid, merely presented the facts at the request of petitioner. What petitioner's predecessor has done in Exhibit C hereto is to credit on the obligations all the money that respondent has received from the Government, paying as the law requires, interest first and crediting the remainder on the principal. With these partial payments made, interest paid and credits allowed, there is yet due respondent the sum found by the Secretary to which subsequent interest obligations are to be added, but that amount is not at all material here.

ARGUMENT AND AUTHORITIES.

The Legal Issue Involved.

In describing the method to be adopted by the Secretary of the Interior in arriving at that "just compensation" provided for in the Act of 1918 (respondent's brief, Appendix A) and carried forward in the Act of 1919 (petitioner's brief, Appendix A), there are used words as follows:

> "Expenditures so made or obligations so incurred."

These words limit the rights of respondent and state the duty of the Secretary. It is not denied but is definitely admitted, that respondent incurred obligations, suffered losses therefrom and all its net losses have not yet been paid. Bringing the legal question down to its lowest terms, there is here involved nothing but the meaning of the words "obligations incurred."

Respondent borrowed money and gave notes therefor. It bought machinery on credit and gave notes for the purchase price. It bought equipment on account and obligated itself to pay those accounts and under the statute of Georgia, such accounts bear interest at 7% per annum. The notes bear interest until maturity at 6% and after their maturity at 8%. (This says the Attorney General is lawful, record 65). There can be no doubt that these were obligations and they were incurred but petitioner says they had not accrued prior to March 2, 1919, and that that statute limits obligations to obligations accrued. In effect, what petitioner is seeking to do is to amend the statute, amend the decision of this Court and amend the decree of the trial court by striking from each the word "incurred" and inserting in lieu thereof the word "accrued."

The Issue Has Already Been Decided By This Court.

Strictly speaking, the question is a construction of the judgment and decree of December 15, 1931, heretofore rendered in the trial court and from which no appeal was taken.

This Court, when this case was here the second time (*284 U. S. 231, 237*), cited and relied upon the Act of October 5, 1918, which authorizes a recovery by respondent here of just compensation for its losses and said:

> "The amount of interest that at the time of the passage of the Relief Act March 2, 1919, had been paid or incurred by relator for money borrowed and lost in producing and preparing to produce pyrites upon the specified conditions is to be taken into account in determining the amount of its net loss as of that date. It constitutes a part of relator's expenditures and cost of the undertaking and so is within the terms of the section as amended. *United States v. New York, 160 U. S. 598, 621–624.*"

Seemingly the use of the date March 2, 1919, in the above quotation is the basis of the argument of petitioner here. It is argued on behalf of the Department of the Interior that by the use of this date this Court intended to limit obligations *incurred* to those that had *accrued* on or before March

2, 1919. The Act of 1919 does not limit the right to recover to the losses that had actually been paid but included losses that might thereafter be paid on obligations incurred prior to November 11th and when this Court, in the quotation above, used the words "specified conditions" in referring to the Act of March 2, 1919, it merely wrote into the opinion the conditions of that Act and did not, of course, extend the time in which obligations could be incurred to March 2, 1919, nor did it limit to that date the time that obligations incurred might accrue. There is nothing in the decision of this Court that prevents a recovery of losses from obligations incurred within the specified conditions of the statute.

Petitioner, at page 20 of his brief, refers to the amendatory statute involved in the *New York case*. The Supreme Court did not give any emphasis to that statute in its opinion nor do we think that it has any application here. We do not contend that we are entitled to an allowance for obligations incurred after November 11, 1918. Our contention is that obligations incurred prior to that date, although accruing after March 2, 1919, are allowable items and there is nothing in the statute quoted that conflicts with that contention and it is our opinion that our contention has already been adopted by this Court.

The date the interest losses *accrued* is immaterial so long as the losses are the *result* of *obligations incurred* during the stimulation period.

In the opinion of this Court and following the quotation above, there is set out some of the "specified conditions" which must exist before interest paid or obligations incurred to pay interest are allowable items. These conditions, this record shows, were fully met by respondent.

The Statutes As Well As The Decision Of This Court Entitle Respondent To An Award For Its Losses From Obligations Incurred.

The present proceeding was inaugurated as a proceeding to require a compliance with the final judgment and decree of December 15, 1931, and the question might well be whether that judgment and decree authorized the Secretary to stop

his consideration of interest losses to that interest which had accrued before March 2, 1919. The judgment and decree certainly required the Secretary to adjust the claimant's interest losses generally, and if it did not authorize the Secretary to cut off these losses to accruals as of that date, then it would follow that he had not complied with the judgment and decree. We do not, although we might, place this case on any such narrow ground alone.

The judgment and decree was intended to force a compliance with the statute. It was not intended to give the claimant anything not given by the statute. We do not ask that it be construed as broadening respondent's rights under the statutes. We, therefore, look to the statutes to determine the meaning of this judgment and decree and do not insist that our rights go beyond the statutes.

Meaning of the Statute.

With this preliminary explanation of the nature of the question involved, we confidently assert that the meaning of the statute in this respect is this: It compensates claimants for losses paid on obligations incurred prior to its date. If the obligation out of which the loss arises was incurred before November 11, 1918, the subsequently maturing loss is within the compensation granted by Congress. Since it is settled that interest losses of claimants are losses within the meaning of the War Minerals Relief Statutes, then it follows that those interest losses must have been paid, or the obligation to pay the interest incurred before the date of the statute and during the stimulation period. But the actual accrual of the loss (which is another way of speaking of the accrual of the interest) need not have occurred before the date of the statute, *provided it arises out of obligations to pay interest which were incurred "upon the specified conditions" of the statute.* All of the claimant's losses do so arise.

Liberality Of Construction To Effectuate Relief Demanded.

Not infrequently in this and prior cases involving the same issue, counsel for petitioner and his predecessors have re-

ferred to the statutory provision containing the words "just and equitable." It has been the uniform holding of this Court in cases involving a statute having a purpose similar to the statute here, to interpret the statute liberally for the benefit of the claimant and in pursuance of what is the clear and laudible purpose of the Congress.

This principle is stated in *United States v. New York, 160 U. S. 590, 620; Stewart v. Kahn, 78 U. S. 11 Wall. 493, 504;* and *Monongahela v. United States, 148 U. S. 312, 326.*

In *Russell Motor Car Co. v. United States, 261 U. S. 514, 521, 522,* this Court had under consideration a statute having a similar purpose to the statute here involved, both that statute and this statute having as their purpose to protect those whose property was used during the World War. There this Court graphically describes the necessities of the Government during the Great War and as a result of the exigent condition said the principle to be applied was:

> "Not to provide, therefore, for the cessation of this production when the need for it had passed, would have been a distinct neglect of the public interest."

"Obligations So Incurred" In The Statute May Not Be Disregarded.

We have already disposed of the disingenuous contention that the Secretary has found "as a matter of fact that relator is not entitled in justice and equity to any further allowance for interest." Petitioner begins his argument (p. 11) by the contention that a loss on an obligation is not suffered until the obligation has accrued. If that were the proper construction of the statute, why use the word "obligations?" The word "paid" would have included everything that the petitioner now contends in his brief we are entitled to recover. The only interest that we have received is that interest which was paid prior to March 2, 1919. What, in effect, petitioner seeks to do is to destroy any meaning whatsoever of the word "incurred."

Obviously, respondent "suffered" a loss within the meaning of the Relief Act, as interpreted by this Court, when it in-

curred obligations to pay interest on the money it borrowed and lost.

Petitioner, at page 15 of his brief, says:

> "A claimant may have chosen to obligate himself to pay interest for twenty or thirty, or more, years in the future;"

Whether or not such a statement is legal and logical is wholly immaterial here. What we have here is that a claimant, the respondent in this case, was induced definitely and specifically by the Secretary of the Interior, to obligate itself to pay certain definite sums of money at prescribed times and this is the obligation that we insist the Government has contracted to meet. On the same page, a paragraph from the opinion of this Court is quoted but it will be noticed that in the quotation both the words "paid" and "incurred" are used. The argument we have already made shows that this Court need not have used the word "incurred" if it meant what the petitioner claims it means. We assume that the Court, in using the statutory word "incurred" had a purpose and that it was not inserted uselessly. The words "as of that date" used by the Court are followed in the same paragraph by the statement:

> "It (referring to interest paid or incurred) constitutes a part of relator's expenditures and cost of the undertaking and so is within the terms of the section as amended. *United States v. New York, 160 U. S. 598, 621–624.*" (Parenthesis ours).

In the opinion of the Solicitor of the Department of the Interior herein, speaking of the opinion of this Court, it is said:

> "Literally read the Court's decision holds that the date of the passage of the relief act denotes the ultimate date to which interest may be computed as an allowable item of loss thereunder. That is the date upon which the responsibility of the Government terminated." (R. 54).

The learned Attorney General, after saying:

> "It is not to be wondered at therefore, that as the point was never argued before it the Supreme Court is not very explicit in its opinion" (R. 62),

quoted the same part of the paragraph of this Court's opinion quoted in the brief in this case and said:

> "Clearly, there is nothing in this to justify the conclusion that the court intended to hold that interest accrued after the passage of the Relief Act on obligations incurred before that date was allowable. On the contrary, the inference is that the court was guarding itself against any statement suggesting the inclusion of interest accrued after March 2, 1919." (R. 62).

Petitioner, in his plea herein, said:

> "There is no discussion in the opinion on the point now raised and there is nothing to show that the court reached a conclusion one way or another on the method of computation, or whether there should be a cut-off as of March 2, 1919, in computing the losses for interest paid or liability for payment of which had been incurred." (R. 59).

Notwithstanding the claim on the part of the learned Solicitor, the learned Attorney General and counsel who wrote petitioner's answer that there is an indefiniteness in the opinion of this Court, relator submits that the Court clearly stated that its conclusion was based "upon the specified conditions" of the Act of March 2, 1919, and it is submitted that the Court did not mean to extend rights to incur obligations from November 11, 1918, to March 2, 1919, which would be the inevitable logic of the contention of petitioner. Not only do we believe that our statement of the meaning of the opinion of this Court is the proper construction of the unambiguous language of this Court; it was the construction placed upon your decision by the Department of the Interior and the trial court.

Eight days after the decision of this Court, petitioner's counsel prepared a decree, which was somewhat modified by respondent's counsel (R. 40, decree printed R. 35, 36), in which it was decreed that the petitioner should "forthwith proceed to ascertain the amount of interest that at the time of the passage of the Act of Congress of March 2, 1919, had been paid or *the obligation incurred* by relator (respondent here) for money borrowed and lost * * * " (Emphasis supplied). Upon the service of that decree, petitioner sent out a new

questionnaire asking certain questions, among which were questions 23 and 24, the first being a request to state the "amount of your claim for interest actually paid;" the second being "what is the amount of your claim for *interest still to be paid?*" (R. 40, Emphasis supplied).

The argument used by petitioner drawn from the decision of this Court in *Wilbur v. United States ex rel. Vindicator Consolidated Gold Mining Co., 284 U. S. 231*, is lacking in any logical or legal force. Loss for property purchased as was involved in that case, is not incurred until the property has become valueless or depreciated in value. Loss for an obligation to pay money in the future may be and here was determinable before the obligation was met and that is why, and the only legal reason why, Congress used the words "obligations incurred."

Petitioner cites *Burnett v. Huff, Decided Feb. 6, 1933; Lucas v. American Code Co., 280 U. S. 445;* and *Weiss v. Wiener, 279 U. S. 333.* There is in the facts involved in these cases nothing relevant to the issue here.

We cannot do better than to copy the argument of the Court of Appeals in this case. This argument in part reads:

> "It is urged that to allow interest on obligations that had been incurred but not paid at the date of the passage of the 1919 act would not constitute a final determination of 'the amount of its net loss as of that date.' We are not impressed with this contention. The amount of the principal sum being established as of that date, the interest payable thereon can be ascertained at the same time and readily computed at the time of final payment.
>
> "In the present case the principal sum was borrowed and lost and had not been paid on March 2, 1919, and was not then due. Relator, however, was under obligation to pay this principal sum, which is conceded to be a loss within the act, and he was likewise under obligation to pay the interest incurred in the creation of this obligation. In other words relator was as much obligated on that date to pay the interest as it was to pay the principal. The aggregate of the two items at time of payment by the

Government, constitute the net loss. If relator could not make claim for the interest because it was not payable at that time then by analogous reasoning relator could not be compensated for the principal debt, which was not due and payable at that time." (R. 97, 98).

"Obligations Incurred" Construed In Other Cases.

Under the national banking laws shareholders are liable upon insolvency to the extent of the face value of their stock "for the contracts, debts, and engagements of the bank." "Contracts, debts, and engagements" but describe "obligations incurred" and decisions under the banking laws defining these terms are in principle directly applicable here. In such decisions the authorities are uniform to the effect that the liability is commensurate with the obligations of the bank.

In *Richmond v. Irons, 121 U. S. 27, at page 64*, this Court said:

> "Three other questions raised upon the record remain to be disposed of. The first is whether interest upon the debts of the bank should be allowed as against the stockholders from the date of the suspension. As the liability of the shareholder is for the *contracts, debts, and engagements* of the bank, we see no reason to deny to the creditor as against the shareholder the same right to recover interest which, according to the nature of the contract or debt, would exist as against the bank itself; of course, not in excess of the maximum liability as fixed by the statute. In the case of book accounts in favor of depositors, which was the nature of the claims in this case, interest would begin to accrue as against the bank from the date of its suspension. The act of going into liquidation dispenses with the necessity of any demand on the part of the creditors, and it follows that interest should be computed upon the amounts then due as against the shareholders *to the time of payment.*" (Emphasis supplied).

This language is directly applicable here and shows that for the "obligations" of respondent the Government agreed to pay "net losses" and it follows that the "obligations incurred" by respondent include interest as this Court has held and that

such interest runs "to the time of payment." This is, of course, not interest as such but the obligations to make good the losses. The stockholders' and the Government's obligations here were to pay losses.

Congress, By Act 1924, Supports Respondent's Contention.

It will be noted in the argument of petitioner on page 20 where he cites the *New York case*, that the word "incurred" is italicised. That is the word used here and this Court cited the *New York case* in support of its opinion in this case.

Some argument is made by petitioner on page 20 of his brief that disregards the history of the legislation now before the Court.

On January 9, 1924, the Supreme Court of the District of Columbia, in the opinion referred to ante, p. 4, held that interest paid and obligations to pay interest were properly allowable. The Secretary brought this holding to the attention of the Congress. This holding was sustained by the Court of Appeals (*Work v. United States, 298 Fed. 839*). Later the decision was reversed by this Court on the ground of lack of jurisdiction and while the opinions requiring a recognition of obligations to pay interest remained unreversed, the Act of June 7, 1924, Exhibit B hereto, was passed to meet the situation and the limitation of $8,500,000.00 on the appropriation contained in the Act of 1919 was stricken, leaving the original appropriation of $50,000,000.00 in force. So there is nothing in petitioner's argument that Congress has sought to cut off interest as of March 2, 1919. The amount of interest that respondent is now entitled to has increased. Indeed, petitioner himself, in his former application for certiorari herein, expressed the opinion that the interest amount might be doubled. That statement was approximately accurate. During the fourteen years that petitioner has refused to comply with the law, interest has increased and it has increased considerably in the four years since the Act of 1929 was passed.

On page 26 of his brief, petitioner, referring to a note at page 24, contends that payments made "it possible for the

respondent to discharge its interest bearing obligations in full." Here again petitioner relies upon a statement that was definitely disproved by the Assistant Secretary of the Interior and as to which no proof was offered by petitioner himself. The facts are stated by the Secretary himself in Exhibit "C" hereto and it there appears that crediting all payments made, first to interest and then to principal, there remains a large amount due respondent. Again we wish to call attention to the fact not only that the statement relied upon was definitely disproved, but that this raises an accounting question which the law leaves to the Secretary.

CONCLUSION.

The question here is are we to use the language of the statute and take obligations incurred and pay net losses therefor, or are we to change the statute and limit obligations incurred to those accrued on or before March 2, 1919?

It is submitted that the opinion of the Court of Appeals should be affirmed.

Respectfully submitted,

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APPENDIX A.

Act October 5, 1918.

"An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."

The Essential Substance of the Act.

The Act is printed 40 Stat. 1009, and following. In Section 1 thereof it is stated:

> "By reason of the existence of a state of war, it is essential to the national security and defense, and to the successful prosecution of the war, and for the support and maintenance of the Army and Navy, to provide for an adequate and increased supply, to facilitate the production, and to provide for an equitable, economical, and better distribution of the following-named mineral substances and ores, minerals, intermediate metallurgical products, metals, alloys, and chemical compounds thereof, to-wit: * * * pyrites * * * as the President may, from time to time, determine to be necessary for the purposes aforesaid, and as to which there is at the time of such determination, a present or prospective inadequacy of supply. The aforesaid substances mentioned in any such determination are hereinafter referred to as necessaries."

Section 2 authorized the President to purchase such necessaries and to enter into contracts for the production thereof. The section further makes certain provisions for the cost price, which shall be at a price not "less than the purchase or cost of production thereof."

Section 3 authorized the President to take over mines producing the named minerals, and provided:

> "The United States shall make just compensation, determined by the President, for the taking over, use, occupation or operation by the Government of any such

necessaries or any such land, deposit, mine, smelter, or plant, or part thereof."

This section also provided that if the just compensation to which the owner was entitled could not be agreed upon with the President, suit therefor or for a part thereof was authorized.

Sections 4 and 5 relate to administrative matters not material here.

Section 6 appropriates the sum of $50,000,000 to "be used as revolving fund for carrying out the objects of this Act, and for the purpose of making all payments and disbursements, including *just compensation* under section three."

Sections 7, 8 and 9 refer to administrative acts and are not material here.

Section 10 provides for a determination of the operative force of the Act, which was upon the proclamation of peace by the President.

Sections 11 and 12 are not material to the issue here.

APPENDIX B.

Act of June 7, 1924.

(Public—No. 249—68th Congress) (S. 2797).

An act to authorize the payment of claims under the provisions of the so-called war minerals relief act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to enable the Secretary of the Interior to lawfully pay adjudicated claims arising under the provisions of the so-called war minerals act entitled "An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," approved March 2, 1919, as amended, the limitation in said act on the aggregate amount to be disbursed thereunder in the payment of said claims is hereby repealed.

APPENDIX C.

The Secretary of the Interior

Washington

February 25, 1933.

Mr. Lee Ashcraft,

President, Ashcraft & Wilkinson Co.,

Atlanta, Georgia.

My dear Mr. Ashcraft:

With the award of $90,500 made on February 24, 1933, in the war minerals claim of the Chestatee Pyrites and Chemical Corporation in its War Minerals Claim No. 1, complete settlement has been made for all claims of said company under the War Minerals Act, except the claim for interest from and after March 2, 1919, which is now on appeal in the Supreme Court of the United States from decision of the Court of Appeals of the District of Columbia. If the Supreme Court confirms without modification the decision of the Court of Appeals, the Department has calculated that the amount due in said claim would be $561,867 as of December 31, 1931, subject to errors or omissions in computation and to additions from the last date of calculation to date of final settlement.

Sincerely yours,

RAY LYMAN WILBUR,

Secretary.

NOTE—Ashcraft & Wilkinson Co. is the company Secretary Lane induced to lend the monies for which respondent incurred obligations.

SUPREME COURT OF THE UNITED STATES.

No. 767.—October Term, 1932.

Harold L. Ickes, Secretary of the Interior, *vs.* United States of America, *ex rel.* Chestatee Pyrites & Chemical Corporation.	On Certiorari to the Court of Appeals of the District of Columbia.

[May 29, 1933.]

Mr. Justice Brandeis delivered the opinion of the Court.

The claim of the Chestatee Pyrites & Chemical Corporation for compensation under the War Minerals Relief Act, March 2, 1919, c. 94, § 5, 40 Stat. 1272, 1274 is here for the fourth time.[1] Before the World War the company owned a pyrites mine. In 1918, it made extensive enlargements of its plant at the request of the Secretary of the Interior. As hostilities ceased soon thereafter, the undertaking resulted in a large loss. Prior to 1922, it made applications for relief from the losses suffered. These applications resulted in awards aggregating $737,765.24. Of this amount $223,529.17 was paid by the Government on October 25, 1919; $469,784.62 on October 5, 1922; and $44,451.45 on March 14, 1932.[2]

The demand now presented is for the further sum of $524,276.43, alleged to have been due December 31, 1931; and for additional amounts which cannot be stated definitely because they are accruing daily. These sums, claimed as items of loss, represent interest paid or accrued since March 2, 1919, on a contract to repay with interest $645,000 borrowed by the Corporation in 1918, mainly in

[1] See Work *v.* United States, *ex rel.* Chestatee Pyrites & Chemical Corporation, 267 U. S. 185; Wilbur *v.* United States, *ex rel.* Chestatee Pyrites & Chemical Corporation, 284 U. S. 231, 237-8; Wilbur *v.* United States, *ex rel.* Chestatee Pyrites & Chemical Corporation, 288 U. S. 97.

[2] Since then two additional awards have been made to the Corporation, which are not directly involved in this case. On December 7, 1932, an award of $1,584.76 was made on account of taxes. And on February 23, 1933, a further award of $90,500 was made by the Secretary pursuant to the decision in Wilbur *v.* United States, *ex rel.* Chestatee Pyrites & Chemical Corporation, 288 U. S. 97. The Corporation has thus received awards aggregating $829,850.

order to pay for enlarging the plant.[3] In 1922, the Secretary had, in calculating losses suffered, refused to allow any sum paid for interest on borrowed money. The Corporation thereupon sought, by mandamus, to compel the award of interest. In that proceeding this Court held, in 1925, that mandamus must be denied, because the Act made the determination of the Secretary conclusive,[4] *Work* v. *Chestatee Pyrites & Chemical Corporation*, 267 U. S. 185. The proceeding at bar is a second petition for mandamus, filed pursuant to an amendment of the Act made February 13, 1929, c. 182, 45 Stat. 1166, which authorized a claimant thereunder to "petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or may hereafter arise in the adjustment, liquidation and payment of his claim under said Act."

The Corporation sought in the second petition for mandamus, as in the first, to compel the Secretary to consider, in determining the amount of net losses, interest payable on borrowed money. The trial court denied the mandamus. Its judgment was reversed by the District Court of Appeals, 47 F. (2d) 424; and in sustaining the reversal, in *Wilbur* v. *United States*, 284 U. S. 231, 237, 238, we said: "The amount of interest that at the time of the passage of the Relief Act, March 2, 1919, had been paid or incurred by relator for money borrowed and lost in producing and preparing to produce pyrites upon the specified conditions is to be taken into account in determining the amount of its net loss as of that date." Thereupon, the Secretary made an award of $44,451.45, this amount being, as stated by him, "the amount of interest that at the time of the passage of the act of Congress of March 2, 1919, had been paid on the obligations incurred by the relator for money borrowed and lost in producing and preparing to produce pyrites . . . and for which in justice and equity the relator was entitled to receive reimbursement . . . ."

The Corporation insists that there should, as stated, be allowed, as part of its net loss, on account of interest payable on borrowed

[3]The loans totaled $695,000; but it was found that "$50,000 of the amount was loaned prior to stimulation."

[4]The Act declared in § 5: "The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final. . . ." 40 Stat. 1274.

money, the further sum of $524,276.43, and, also, additional amounts which can not be definitely stated now. The $524,276.43 represents interest paid or accrued between March 2, 1919, and December 31, 1931 growing out of obligations for borrowed money outstanding March 2, 1919. The claim for additional unascertained amounts represents the interest which has accrued on those obligations since December 31, 1931, plus that which will accrue hereafter on such parts thereof as may, from time to time, be outstanding. To enforce this demand, the Corporation secured a rule upon the Secretary to show cause why he had not complied with the decree entered pursuant to our decision in the *Wilbur* case. The Secretary averred that he had fully complied therewith, by allowing all interest paid or accrued to March 2, 1919; and that this was all the interest "for which in justice and equity the relator was entitled to receive reimbursement from the appropriation made by Congress for the payment of such losses." The District Court sustained the position of the Secretary. Its judgment was reversed by the Court of Appeals of the District, 62 F. (2d) 863. This Court granted certiorari, 288 U. S. —. We think the District Court was right.

First. The Corporation contends that in computing losses which "have been suffered" as of March 2, 1919, no distinction can be drawn between the principal of the loan and the interest thereon; that as the amount of the principal was included without question in ascertaining the loss as of March 2, 1919, although the loan was not then due, the amount of the interest should similarly be included, whether it had been paid or had accrued as of that date or had accrued later. The argument rests upon a misconception.

Congress did not authorize or direct the Secretary of the Interior to pay any loan of a claimant. Section 5 of the War Minerals Relief Act, March 2, 1919, authorized the Secretary to "adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce . . . pyrites . . . in compliance with the request or demand of the Department of the Interior . . . to supply the urgent needs of the Nation in the prosecution of the war."[5] The

[5]The section was amended November 23, 1921, c. 137, 42 Stat. 322, by adding "that all claimants . . . shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the

$645,000 capital raised by the loan, like some other capital of the Corporation, was wiped out by the deficit in operation and the shrinkage of capital assets. And for the loss thus sustained the Corporation was reimbursed by the payments under the award made. The cost to the Corporation of carrying the loan after March 2, 1919, was not part of the net losses which had "been suffered."

The method of determining the net losses in such businesses during a particular period, or in a particular adventure, is well settled.[6] The net losses consist of any deficit from operations plus any shrinkage in value of the plant investment. In calculating the loss for a period it is immaterial whether items entered as operating expense or as investment have been paid or are still owed for. If the capital employed by the Corporation during the period, whether owned or borrowed, was sunk, its loss will necessarily be reflected either in the deficit from operations or in the shrinkage in value of the capital assets. In calculating the operating deficit during the period ending March 2, 1919, interest paid or accrued on the borrowed capital was treated as an operating charge. Interest accruing thereafter on any loan then outstanding is comparable to the cost of caring, after that date, for property retained—or to a lessening, after that date, of the value of that property. Such items enter into the determination of the losses of a later period; and with these the Government has no concern. Hence, the Secretary properly refused to consider interest accrued after March 2, 1919, in calculating losses during the period ending that day.

Second. The Corporation insists that the Act should be construed as requiring the Secretary to include as an item in the loss suffered before March 2, 1919, all interest thereafter accruing on an "obligation incurred" before that date. It argues that a liberal construction of the Act requires this conclusion, *United States* v.

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appropriation in said Act"; and "If in claims passed upon under said Act [of March 2, 1919] awards have been denied or made on rulings contrary to the provisions of this amendment, or through miscalculations, the Secretary of the Interior may award proper amounts or additional amounts".

[6]See, e. g., T. O. McGrath, Mine Accounting and Cost Principles (1921), pp. 147, 178-179; R. B. Kester, Accounting Theory and Practice (1918), pp. 487-488; H. A. Finney, Principles of Accounting (1931), c. 3, pp. 4-7; W. J. Graham and W. G. Katz, Accounting in Law Practice (1932) pp. 27-33.

New York, 160 U. S. 598, 620, particularly in view of related legislation.[7] In support of that construction, it points to provisos of § 5 which declare (1) that "no claims shall be allowed or paid" by the Secretary "unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred were made in good faith" and (2) "that moneys were invested or obligations were incurred subsequent to" April 6, 1917, and prior to November 11, 1918.[8] These provisos did not by referring to obligations "incurred" enlarge the Secretary's authority to "pay such net losses as have been suffered." On the contrary, their purpose was to make clear that where expenditures were alleged, the Secretary must be satisfied that payment therefor had actually been made or that there was a valid agreement to pay therefor.

When this Court stated in the *Wilbur* case that in determining the loss as of March 2, 1919, there shall be taken into account "the amount of interest which has been paid or incurred by relator for money borrowed and lost," the word "incurred" was used to mean interest accrued on that date, as well as interest paid. The language of the opinion was correctly construed by the Secretary when he limited the additional award, on account of interest, to $44,451.45.

Reversed.

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[7] Act of October 5, 1918, c. 181, 40 Stat. 1009, entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply;" and Act of June 7, 1924, c. 327, 43 Stat. 634, which removed the limitation of $8,500,000 as the amount payable in the aggregate on claims under the Act of March 2, 1919.

[8] Among the provisos are the following: "And provided further that no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance. *And provided further*, that no claim shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen. . . ."